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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN ENSIGN, a Senator from the State of Nevada.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Great King above all Gods, Your anger is but for a moment and Your favor is for a lifetime. You satisfy those who are thirsty and fill the hungry with good things.

We thank You for this great land where we have freedom to worship You without limitations or censor. We praise You for the freedom we find in Your presence and for Your power to liberate us from debilitating habits and addictions. Today, bless our lawmakers in their work. Use them to eradicate the barriers that divide us. Make their diligent labors enable us to live in justice and peace.

Lord, whatever light may shine or shadow fall, help us all to meet life with steady eyes and to walk in wisdom until we reach our journey's end. We pray in Your loving Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN ENSIGN led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 15, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN ENSIGN, a Senator from the State of Nevada, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. ENSIGN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today we will have a 30-minute period of morning business which will be equally divided between the aisles. After that time we will begin debate on the motion to proceed to the USA PATRIOT Act. Last night there was an objection from the Democratic side to my unanimous consent request to begin consideration of that bill and, because of that objection from the other side of the aisle and expected filibuster, I was forced to file cloture on the motion to proceed. That motion is debatable, and I will alert my colleagues on the other side of the aisle that they will need to remain on the floor during this motion.

We only have a few days remaining before the Presidents Day recess, and we need to get to the substance of the underlying bill, the PATRIOT Act. Members have a right to filibuster proceeding to that measure, but I believe we will be able to invoke cloture by a wide margin, again, showing wide support for this important piece of legislation. I will announce the exact timing of the cloture vote when we have that locked in, but it could be as early as 1 o'clock in the morning when we could hold that vote. We will be in discussions with the Democratic leader in terms of the time of that vote and we will be able to announce that later today.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BROWNBACK.) Without objection, it is so ordered.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will be a period for the transaction of morning business for up to 30 minutes, with the first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Democratic leader or his designee.

The Senator from Nevada is recognized.

ECONOMIC GROWTH

Mr. ENSIGN. Mr. President, my home State of Nevada is a State that is friendly to business. We pride ourselves on the opportunities that businesses have to thrive and grow in our State, while providing an excellent quality of life for employees and their families. As chairman of the Republican High Tech Task Force, I come into contact with many companies, all who hear my pitch for why they should expand into Nevada. But as good as businesses have it in Nevada, or if they move to Nevada, what we do here in Washington, DC will ultimately help make or break their success. And when businesses fail to thrive, so does our economy.

Investors in a business in California may be sitting down today to determine whether their 2-year plan includes expanding to Nevada with, for instance, a manufacturing plant that will employ 200 people. They are excited about the possibilities, but there are too many blank spaces when it comes time to crunch the numbers. Weighing heavily in their calculations, they are concerned that the current dividends and capital gains tax rates will expire in 2008. Because of the uncertainty of those critical factors, they are leery about the prospects.

They will make that decision about expanding and reinvesting in their businesses today. Not next year and not the year after that. Today. But we have tied one hand behind their back. We are standing in the way of their growth and potential if we do not extend the dividends and capital gains tax rates. They need that assurance today so that they can expand, create jobs, and help our economy continue to grow.

The economic growth we have seen since lower tax rates were enacted in the Jobs and Growth Tax Relief Reconciliation Act of 2003 is exactly why we must extend the rates. Dividend distributions are up. Corporate investment in new property, plant, and equipment has surged. The economy has grown for 10 consecutive quarters.

These are impressive results, and they are not just about business succeeding. The impact is being felt by families, seniors, and low-income individuals. With more than 50 percent—50 percent—of American households owning stocks or mutual funds, the reach of dividends and capital gains rates is significant. Today, many senior citizens rely on dividends and capital gains to supplement their Social Security. And lower and middle-income families are benefiting as well.

Without this extension, our economy will take a hit, and so will working families across Nevada. Instead of closing doors on them, we need to create certainty in our Tax Code and opportunity for our economy. Although the tax rates don't expire until 2008, we don't have the luxury of waiting 2 years to extend this. By then, too many investors and businesses will have made their decisions not to grow, not to build, and not to hire. It will be too late.

We are part of a global economy that is constantly moving and changing. If we don't allow investment to fuel our competitiveness and innovation, we will pay the price, and so will future generations.

It is not just one business in California deciding whether to move to Nevada, and it is not just the 200 employees who could have found work there; it is about investors and companies across our Nation and it is about working families throughout this country, and it is about the future of our economy.

There aren't many factors that Congress controls when it comes to capital and business investment. This is one of them, and we must join together to ensure continued economic growth.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

THE ECONOMY

Mr. THOMAS. Mr. President, I come to the floor also to talk about where we are and, more importantly, where we need to go with respect to the economy that impacts all of us in various ways. It seems appropriate to emphasize some of the key points about the health of our economy, about what is doing very well, and about what we need to be working on now to ensure that this continues, and also to have 20/20 vision about where we want to be and what we need to do to get there.

I am disappointed about the slowness in our moving this year and a certain amount of obstructionism that seems to be going on in terms of moving forward. Nevertheless, we ought to keep in mind that over the last year, we have been able to accomplish a great deal and the challenge is there to move forward.

We have been able to keep the taxes relatively low, which, obviously, is a key factor in our economy, and we need to make sure it continues that way. We have certainly been able to do what is necessary to work toward having a strong health care program in this country, and that is a great challenge for us. We did do something last year with pharmaceuticals, making them available, and even though the process was a little difficult, now we are seeing great increases in the number of people who are able to obtain pharmaceutical drugs at a more reasonable rate.

We have assured that there will be more opportunities for job training and training in technologies so that we will have more research and will be able to continue to lead the world in terms of our economy.

I think one of the more important things we did last year was to pass an energy bill that gives us some direction in terms of one of the most important elements of our economy. There were other accomplishments as well last year. We passed legislation to end frivolous lawsuits, which has had a great impact on many aspects of our economy. We put some judges in place with a fair process.

We need to be reminded sometimes of how well our economy is doing in terms of real growth. The GDP growth experienced in 2005 was at a rate of 3.5 percent for the year as a whole, while inflation remained at 2 percent. So that is very good. Those are very good numbers, and it is better than what we have experienced over a number of years, and certainly it is exactly what we want to do.

Real disposable income rose at 4 percent in December. We are up 1.4 percent for the year 2005. The aftertax income per person has risen almost 8 percent. Real household net worth is at an all-time high. This is good, and we need to make sure we understand that.

Retail sales have risen, again, 7 percent in December and 6.4 percent for the whole year. So that is very good.

Employment growth remains high. Employers created 2 million new jobs in 2005, resulting in a less than 5-percent unemployment rate at the end of the year.

Since 2003, when the tax cut went into effect, there have been almost 5 million new jobs created. That is a good sign, and we ought to understand it is the impact of that tax cut. Job growth is often affected and impacted, as is the total economy, by what we do with taxes. We have a great deal of controversy about it, of course. When we have the unusual expenses of the war on terrorism and of Katrina, it makes it difficult as we look at our budget. But the fact is the discretionary part of the budget has been held down. We need to get the job completed in Iraq, complete our work there and reduce that spending and bring our troops home. All of us want to do that.

The point I want to make is we have had a very favorable impact from what has been done over the last couple of years, and the thing we are seeking to do right now is continue those tax reductions that will strengthen the economy and continue to help. As I said, employment remains high. That is good. Job creation is what we want to do. We have to deal with immigration, of course. Even though we do need immigrants and workers here, we need to be legal. But we have this job creation thing that we need to continue to work on.

One of the real challenges we have before us is to deal some more with energy. As I said, last year we passed energy policies that I think were excellent. Now, of course, we have to implement those policies. We dealt last year with the question of alternative fuels in the future, whether we will be able to use wind energy, be able to use bioenergy, be able to use ethanol, all of these kinds of things. Those are future activities, and we will be able to do that. That challenge is to have the technology and the funding for the research to be able to move into those fields. That is something we can do and indeed we must do.

Coupled with that is another challenge. Those changes are going to be over a relatively long time, at least several years, where we are faced immediately with shortages and dependence on world production and with costs. We are working on a budget that will provide funding for doing research in the short term.

There are opportunities, for instance, in Wyoming and many of the energy production States where we have new sources of fairly immediate energy. We can do some things with coal, for example, our largest fossil fuel. We can make some conversions from coal into

gas; we can make conversion into hydrogen and do those things in a fairly short term. Of course, gas is more flexible than coal, so if we can do something there, that would be good. We have an opportunity to go into shale oil which is a different source than we have used in the past. It takes research to get there. We need to be doing that.

Coupled with that, of course, to keep our economy going and make sure we deal with the energy issue is conservation and efficiency. There is a great challenge there, to use less energy in our economy and be more conservative in our use—whether it is automobiles or buildings. Clearly, we can do more in that area than we have done. That is a challenge we have before us. That will have a great impact on the economy.

Home sales are at a record level. More people than ever own their homes, and that is a great thing. We need to ensure that continues to happen and we have the tax incentives and other regulations in order to do that.

When we put in place some of the tax reductions that helped the economy, another impact of it has been an increase in revenues. Tax cuts not only leave more money in the pockets of Americans but have also resulted in fairly dramatic increases in receipts to the Treasury. Tax collections from nonsalaried income were up 32 percent as a result of tax reductions on capital gains and these sorts of things. They cause more investment and more activities, which are then taxed and bring money in. Capital gains collections brought in almost $80 billion, up from almost $50 billion from 2002.

The broad point is we are able to do some things that strengthen the economy, that allow people to create more jobs and invest more in the economy by reducing taxes and, at the same time, because of the economic growth, increase revenue.

All these results point to continuing to pursue that. Actually, in January we ran up one of the highest surpluses in the last 4 years—$21 billion. That is a great thing. Now we have to take a little longer look at spending on the other side so we can balance these things out.

Health care is another concern. We need to take some long looks at that. We need to provide the opportunity for health care for everyone. Accessibility becomes difficult because of the costs. I am from a rural area. Rural health care is one of the issues we have. We have done some things there.

Overall, we have seen some real growth in the economy and some good things happening. We have an opportunity to continue to do that. I hope we will get moving with the things that are here and continue to do the things that help this economy and do good for the American people.

The PRESIDING OFFICER (Mr. COBURN). The Senator from the great State of Oregon.

Mr. WYDEN. I ask unanimous consent to speak for up to 20 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE ALTERNATIVE MINIMUM TAX

Mr. WYDEN. Mr. President, millions of Americans are now going through a paperwork nightmare, trying to complete their taxes. They are trying to find their 1099s and their W–2s and their schedule this and schedule that. They shout across the room: Honey, can you find the copy of the receipt for that copier we bought back in March?

What I am going to do between now and April 15 is highlight some of the ways this Tax Code gratuitously complicates the lives of all our citizens—middle-income folks, low-income folks, and the affluent. I am going to be pointing out specific provisions in the Tax Code and try to describe how it does not have to be this way. We do not have to have a ''deadwood'' tax bureaucracy, where we now have had more than 14,000 changes. That comes to something akin to three for every working day in the last 20 years.

Our citizens are going to spend more this year complying with the Tax Code than this country spends on higher education. We are going to spend $140 billion complying with the needless kind of bureaucracy that I am going to describe this morning. It is my intent between now and April 15 to discuss this. I am going to start today with the alternative minimum tax, which is true water torture for middle-class folks who basically have to figure out two taxes, their taxes and the alternative minimum tax. There is a whole set of complicated procedures here. After I complete this week's presentation on the alternative minimum tax, it is my intention to go next to the earned income tax, which is also mindlessly complicated.

Then I intend to focus on a number of the provisions for those who are very affluent that strike me, again, as defying common sense in how they are written.

Today, I want to begin by focusing on the alternative minimum tax. It is, of course, a crushing tax for millions of middle-income people, folks who definitely do not consider themselves fat cats. Across this country, 3.6 million taxpayers were impacted by the alternative minimum tax this year. The number is expected to rise to over 19 million by 2006 unless the Congress acts this year.

The form that you use for the alternative minimum tax is form 6251. The first line sums up what all of this has come to. The first line says:

> If filing Schedule A (form 1040), line 41 (minus any amount on form 8914, line 2) and go to line 2. Otherwise enter the amount from form 1040, line 38 (minus any amount on form 8914, line 2) and go to line 7. (If less than zero, enter as a negative amount.)

I think it is pretty obvious that what I have read is, for all practical purposes, incomprehensible. You would have to have a Ph.D. in economics. What it means is that in order to fill out form 6251 for your minimum tax you have to fill out not just form 1040 but also form 8914. How much time is that going to add to tax preparation? What about trying to understand form 8914, for those who may have to fill it out?

Are people in this country going to have to become CPAs to fill out this tax requirement that affects millions of middle-class people? I bring this up because it does not have to be this way.

I would like to now post the alternative that I have developed in my Fair Flat Tax Act, S. 1927. On line 1, instead of all the mumbo jumbo I read—it is real simple—all you have to state is whether you are single, married, head of a household, qualifying widower.

I filled out my one-page 1040 form that my legislation mandates in about a half hour. That alone is a bit of a revolution in the Senate Finance Committee, or the tax-writing committee in the other body, because it has been a long time since anybody who wrote tax laws could fill out their own returns. I bring this up only by way of saying let's make sure people understand how much deadwood and legal mumbo jumbo and needless complication there is in the Tax Code. That is why I have started today with the burdensome requirements of the alternative minimum tax. But I am going to go on, in the weeks ahead, to a number of other kinds of provisions.

As a result of what I read on the alternative minimum tax, lots of folks simply turn to tax preparers. This year we will spend $140 billion on tax preparation. That is more than the Government spends on higher education. It is pretty obvious why. There were 14,000 changes in the Tax Code since the last major overhaul, three significant changes for every working day in the last 20 years.

What I do in my fair flat tax legislation is simply say to the distinguished Presiding Officer of the Senate, the distinguished Senator from Oklahoma: You take your income from all your sources, you subtract your deductions, you add your credits, add it all up, send it to the IRS, and say: Have a nice day, I am done.

One page, 1040 form—somebody called me about it yesterday and we discussed how long it took me to do it. I mentioned I could do mine in half an hour. They said: Ron, it only took me 15 minutes.

That is what this is all about. I am not sure the Congress understands how this body has permitted this mindless bureaucracy, a bureaucracy that only can be described as deadwood, a bureaucracy that has lost all kind of connection with what the middle class in this country is all about. And I want to change it.

I believe we ought to start tax reform by simplifying the Code. Then let us

change the tax system so that all Americans have the opportunity to climb the ladder of success. One way you do that is to change a set of rates that now have the second richest person in America, Warren Buffett, paying a lower tax rate than his receptionist. The Tax Code discriminates against work.

I am not interested in soaking anybody. I believe in markets, and I believe in creating wealth, but as we saw today where we have very low rates in savings for the middle class, it is because they cannot keep up. Their wages aren't even keeping up with inflation. Their concerns are about those matters where the second word is ''bill''—the tax bill, the medical bill, the gas bill, the heating bill, and the education bill.

We say with my legislation that we are going to end the discrimination against work. We will protect 90 percent of all interest income earned by our citizens—their house, the capital gains they may be able to enjoy if they sell it, their savings accounts, their life insurance. I want us to build a new savings ethic. I do that in this legislation as well. But for the life of me, I can't figure out why we can't get both political parties to get moving on this issue.

The President has an advisory commission. They asked me what I thought about it. I said: Look, I have a one-page 1040 form which will simplify this code for everybody. The President's commission report is a bit longer, but for purposes of Government work, they are pretty close together.

So why not start with simplification? Why not start with the rates I have proposed which I would like to bring to the attention of the Senate? The first bracket of rates in my legislation is 15 percent, the second bracket is 25 percent, and the third bracket is 35 percent. That is what Ronald Reagan proposed. Those are the exact brackets Ronald Reagan proposed in 1986.

Now, much has changed. I would be the first to acknowledge that. Certainly the AMT hits much harder than anything that was anticipated in the 1980s. But I am interested in being flexible with respect to the rates.

If the Senate, after bipartisan deliberation on a fair flat tax, wanted to have 13, 23, and 33, that would be fine with me. The principle is we ought to say marginal rates are important; they send a very significant message with respect to growth. But let us treat all income the same. Let us particularly get rid of some of this mindless kind of bureaucracy.

We are having a hearing today on the tax gap, the money that is not collected that ought to be paid. We all realize that is a good opportunity to generate revenue to help the middle class. If we pick up some of that money, we will drive the rates down for everybody in this country even more than I am proposing.

People ask me what I stand for. I stand for the proposition that every American ought to have the opportunity to climb the ladder of success. And let us start by changing the Tax Code, where the second wealthiest person in the United States, Warren Buffett, pays a lower tax rate than his receptionist. How is the receptionist going to be in a position to be in the middle class if we don't treat them fairly?

I also think it is worth noting that when you graduate from a college in Oklahoma or in Illinois, when you go out into the marketplace and in the first job with your new college degree, after all that hard work, you are going to pay a higher tax rate than Warren Buffett, the second wealthiest person in this country.

We need incentives for investment.

I protect 90 percent of the interest income earned by people who are saving and showing the kind of financial discipline which is necessary to get ahead.

But we can have a Tax Code that is simpler, flatter, and fairer.

I wrap up by saying to both Democrats and Republicans, I believe this is really what you are all about.

For Democrats, what could be more important than a message about giving the middle class a fair shake, the opportunity to climb the ladder of success and get out from under some of this bureaucracy?

Our friend from Illinois is here, Senator DURBIN. His colleague from the House, Congressman EMANUEL, has tax clinics in Chicago for families who can't fill out the earned income tax credit because it is too complicated. I have outlined how absurd the requirements are for the alternative minimum tax and why it is difficult for folks to comply. But this is something which affects everybody—poor folks with the earned income tax credit and the middle-class folks with the alternative minimum tax.

As far as I can tell, many of the affluent in this country are saying to themselves: What really counts is finding a better accountant to get me more tax dodges because that is the way you get ahead in this country, not by innovating but by finding an accountant to get you more tax dodges.

It doesn't have to be this way. The Code doesn't have to be as complicated as it is. The Code doesn't have to discriminate against people who work for a living. The late President Reagan accepted that principle in the 1986 tax reform.

We can do this. Certainly the administration, after talking about how they were interested in tax reform and forming a commission, is going to ask me and, I believe, other Members of Congress: Where are the deadlines?

This is an opportunity for the administration to have a big second-term initiative. Ronald Reagan did this in the middle of his second term because he reached out to Senators such as Bill Bradley and the chairman of the Ways and Means Committee in the other body, Congressman Rostenkowski.

It is time to cleanse this Code. It has been 20 years since real reform, 14,000 changes, spending more on preparation than the Government spends on higher education. That is a disgrace. It is not right to working people. It is not right to all taxpayers, regardless of their income.

It is my intention to come back to this Chamber again and again—but particularly between now and April 15—as I have done today with the alternative minimum tax.

I would like to pose once more the language for folks who are middle income and trying to comply with the alternative minimum tax. If anybody who is not a CPA can figure out the first line of the AMT, I urge them to call me. My guess is they can't. They will have to call their accountant to sort it out.

I also wish to point out for people trying to get help this morning that the IRS has an 800-number. We will post it on our Web site: 1–800–829–1040.

As I wrap up this presentation, let me contrast this, which is the dead wood in the tax bureaucracy today, with the legislation I have filed, the Fair Flat Tax Act, which replaces the legal mumbo-jumbo I have shown you with our section 1—just a handful of lines—describing whether you are single, married, head of household, or a widower.

I know colleagues are waiting to speak.

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. WYDEN. Certainly.

Mr. DURBIN. I would like to ask the Senator from Oregon through the Chair—first, I would like to tell him that about 10 or 15 years ago, in my hometown, my accountant in Springfield, IL, passed away, a man who had done the tax returns for my wife and me. After years of being a lawyer, I thought to myself: I can do this. I will fill out my own income tax return.

I went back home Sunday afternoon and sat down to fill out what is a pretty simple income tax return for a Member of Congress. It took me 3 or 4 hours, and then I had to come back to it the next day, and I filed it. I then found out I had made several glaring errors. This was before TurboTax, H&R Block's Web site, and all the rest of these things. But I thought: Let me do it myself. I tell the Senator from Oregon that I have an abiding respect for what he just said after that humbling experience.

I would like to ask the Senator whether he thinks we would have more impetus for simplifying tax returns if Members of Congress had to file their own tax returns, prepare their own tax returns, and then submit to the American people the fruits of their labor as to whether they made mistakes?

Mr. WYDEN. Mr. President, I thank the distinguished Senator from Illinois, who as usual is being a bit too logical. The fact is, if Members of the Congress had to go through this—because we

will have a lot who are paying the AMT, many who have investments of a variety of sorts—I believe that alone could trigger a bit of a revolution around here. I think the challenge is for people to see just the kind of tax hole we have dug ourselves into over the last 20 years—14,000 changes, needless complications.

I really do not see how a middle-class person can get ahead with a Tax Code that discriminates against work. The Senator from Illinois has been a champ for the middle-class kind of family.

Here is the way it works. If a cop in Chicago gets a $500 pay raise, that cop pays 25 percent of his or her pay raise to the Federal Government in income taxes, and then they pay Social Security payroll taxes on top of that. If somebody in downtown Chicago makes all their money from capital gains and investment, they pay 15 percent on their capital gains and no Social Security payroll tax.

Again, I have tried to emphasize that I am not for soaking anybody. I believe in markets, and I believe in creating wealth, as I believe Senators of both political parties do. But as the Senator from Illinois has pointed out, if Senators were really forced to deal with these kinds of situations themselves, starting with the Tax Code complications, when they fill it out on their own, that could start a revolution around here.

I believe this is a bipartisan opportunity that comes along rarely.

I will wrap up with one last point.

I believe the Social Security reform showed a lot about what our citizens think about a vital American program. A lot of Americans love Social Security dearly, and there are a lot of rallies outside the offices of Members of Congress, with folks carrying signs saying, ''I love Social Security.'' I tell colleagues that there will be no rally outside your office with people carrying signs saying, ''We Love the IRS Code.'' This is something which could be reformed, could be changed on a bipartisan basis.

Mr. DURBIN. Mr. President, if the Senator will yield for one question which I think gets to the concern people have about tax reform, it seems like a zero-sum game in this respect: If you end up lowering the taxes paid by someone in order to keep the same return to Government in revenue, you have to raise the taxes for others.

So I ask the Senator to step back from his proposal for a minute. Who are the winners and losers?

Mr. WYDEN. The Senator asks a good question. First, a quick word on my proposal, which is available from the Congressional Research Service and Jane Gravell, the top economist who is there to discuss it with Senators. It would actually reduce the deficit by about $100 billion over 5 years, making downpayments in terms of deficit reduction.

But here is what the distribution profile looks like in terms of our legislation. We believe that upwards of 70 percent of the people in this country would get a solid tax cut. These are middle-class folks making $60,000, $70,000, $80,000, and $90,000. Essentially, what the Congressional Research Service has shown is that millions of middle-class people would get relief. It is upwards of 70 percent. We have calculated that about 15 percent of the people in this country would be treated about the same.

For example—and it is matter of public record, and I can discuss it—I have a Senate wage of about $160,000, and I have a bit of investment income. I come out about the same under my proposal as under the status quo. We have to make 6 or 7 percent of the people in this country who make virtually all their income from capital gains and dividends—not from wages—pay a bit more.

So that is what the distributional effect of one actual proposal looked like. That was again very similar to what happened in 1986 when Ronald Reagan, after having started his Presidency with a set of tax changes—and my colleague will remember they were largely for investment—did an about-face and passed a reform proposal that gave real relief to middle-class people.

I want to close by thanking the Senator from Illinois, who I know has a great interest in this subject and has been a strong champion of the middle class.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DURBIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, it is my understanding the Senator from New Hampshire is going to make some remarks and I ask unanimous consent that I be recognized after he has completed his remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 2271, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to consider S. 2271, a bill to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

The PRESIDING OFFICER. Who seeks time?

The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I rise today to speak in support of the motion to proceed and in support of the underlying legislation itself. This bill was introduced to make changes, changes to the PATRIOT Act conference report that was delayed at the end of last year, just as we were ready to adjourn for the holidays.

That conference report had some flaws and weaknesses. I began focusing on and working on reauthorization of the PATRIOT Act well over a year and a half ago, recognizing that we could do more to improve the original Act, we could make this bill more balanced by adding better protections for civil liberties even as we reauthorized the law enforcement tools in the PATRIOT Act to give law enforcement power to conduct terrorism investigations.

I don't think there is anyone in this Chamber who believes we should not provide law enforcement with tools necessary to deal with the threat of terrorism, both domestically and overseas. But whenever we give law enforcement new tools, new powers, we want to make sure they are balanced, balanced by the ability of individuals who think they have been singled out unfairly to raise objections in court, balanced by the ability of individuals to seek legal advice, balanced by restricting the use of these tools to ensure they are only used in appropriate circumstances. That is what protecting civil liberties is all about.

As the process of reauthorizing the PATRIOT Act began well over a year and a half ago, a bipartisan group of Senators, including myself, joined to highlight a number of areas where we felt the legislation could and should be improved and strengthened to provide the kinds of protections I mentioned.

We spoke with Justice Department officials, not a month or 2 months before this process began, but, as I've said, over a year and a half ago, raising our concerns in a clear, articulate fashion, trying to make certain that DOJ knew full well that there was a bipartisan group that would push to make changes to improve the PATRIOT Act and that we would be willing to stand up for those changes and stand up on principle.

Unfortunately, the people who should have been engaged in this discussion process early on simply were not and much of the work was left to the very end of the process, and continued after the law was originally set to expire at the end of last year. As a result, changes that should have been made early were not, and we found ourselves

with reauthorization legislation that could not win enough bipartisan votes to gain passage at the end of December.

What I wish to do today is to talk about the changes that were made to the PATRIOT Act earlier in the reauthorization process that better safeguard civil liberties, and the changes that are in this underlying legislation that I think will allow us to move forward with some confidence that we have made additional improvements since the cloture vote in December.

In the conference report that was delayed, I certainly agree that there were many significant improvements made to the original PATRIOT Act. For example, improvements were made to add clarity to a roving wiretap order to require more specificity as to the target or location of the surveillance to be conducted. Improvement was made to add clarity to delayed notification search warrants, which are search warrants that are conducted without immediately telling the targets of the search.

I think delayed notice search warrants are appropriate tools for law enforcement, but at a certain point law enforcement either needs to inform the target of the search or get agreement from a judge to further delay the notification. In the delayed conference report we added clarity. We added a requirement that a target must be notified of a search within 30 days unless a judge agrees to continue delaying the notification.

We were successful when we took a stand at the end of last year in moving the sunset period in the draft conference report from a 7-year sunset on the most controversial provisions of the PATRIOT Act to a 4-year sunset period, so that 215 subpoena power, a very significant subpoena power for law enforcement to access the most sensitive of records, the lone wolf provisions and the roving wiretap provisions I mentioned, would have to be reviewed four years from now.

All of these were improvements to the PATRIOT Act. But a number of us still had many concerns, concerns in three particular areas.

First, our most significant concern was and is the breadth of the standard for obtaining a 215 subpoena. We felt—and we still feel—it is unnecessarily broad. It could result in the gathering of information that is not only extraneous, but pertains to innocent Americans. We think that standard should be more narrow so that there be shown that an individual who is a target of this subpoena be connected to a suspected terrorist or suspected spy. The current standard of mere relevance to a terrorist investigations is unnecessarily broad.

Second, we feel there should be a clear judicial review, a review before a judge, of the gag order associated with the 215 subpoena. If you are the recipient of one of these subpoenas, that subpoena comes with a restriction on your ability to tell anyone about the subpoena. But you ought to be able to challenge that gag order before a judge.

Third, we feel the provision in the conference report that required the recipient of a national security letter to disclose the name of their attorney to the FBI was punitive and might have the result of discouraging an individual from seeking legal advice. Over the last 6 weeks, I have worked with a number of my colleagues, Democrats and Republicans, on changes to the PATRIOT Act, negotiating with the Justice Department, making Members of the House aware of what we were pursuing, working with Chairman ARLEN SPECTER, who has been very helpful throughout this whole process. Senator LEAHY, Senator DURBIN, Senator FEINGOLD have all been part of these discussions and I have worked to share with them the concepts we were working on, the language we were working on in the areas where there were still differences, differences between those who wanted to pass the conference report as it was and those of us who felt we could strike a better balance.

In the end, we have worked out an agreement on language that has received bipartisan support and makes changes to the conference report in three areas.

First, we add a clear, explicit judicial review process for the 215 subpoena gag order. It is a judicial review process that is very similar to the judicial review process for the National Security Letter gag order set forth in the conference report. I think it is important that we stand for the principle that a restriction on free speech such as a gag order can be objected to in a court of law before a judge. You can at least have your case heard. That does not mean you will win, necessarily, but you can at least have your case heard.

Second, we were able to get language striking the requirement that the recipient of a National Security Letter disclose the name of their attorney to the FBI. Again this is a punitive provision, and it could have the unintended effect of discouraging people from seeking legal advice.

Third, we added clarification to National Security Letters as they pertain to libraries. Our agreement adds a provision that makes very clear that libraries operating in their traditional role, including the lending of books, including making books available in digital form, including providing basic Internet access, are not subject to National Security Letters.

These are three areas that were highlighted as being of concern at the end of last year. I did—and I think the others would agree—we all did everything possible to stay focused on these areas of concern. We made improvements in each of these three areas. I think we ought to be able to move forward now with the reauthorization, knowing full well that in an effort such as this, no party ever gets everything they want. But having shown that there is a bipartisan group of Members of the Senate and I believe Members of the House as well who will look carefully at these measures, who will push hard for improvements, I think the oversight of the PATRIOT Act will be improved. I know that the reporting to Congress as to how this act is used will be improved. Requirements to report on the use of 215 subpoenas and the minimization procedures used to get rid of data and information on innocent Americans collected through 215 subpoenas and National Security Letters are improvements.

So I feel confident we have legislation that is a vast improvement over current law in terms of protecting civil liberties. We have oversight that is improved and, frankly, we have a strong coalition within Congress that is committed to doing an effective job in making sure these important law enforcement tools are used effectively but also used fairly.

I know not all my colleagues will support this final package. I know in particular Senator FEINGOLD, who has worked extremely hard on this issue, is not able to support this final package. He will speak more eloquently than I can as to the concerns that remain, but among his concerns is the breadth of the 215 standard and the feeling that we ought to be able to agree on and work toward a standard that will prevent fishing expeditions, that will better protect civil liberties but still enable law enforcement to do their job. I share that concern and that goal, but I at the same time recognize we have an obligation to take the many gains we received throughout the reauthorization process and reauthorize this legislation so we can move forward, focus on our outstanding concerns, and focus on the agenda that still sits before Congress.

I thank the President for the time and the opportunity to lay out the improvements that are in the package before us. I look forward to the debate and the discussion, but I do hope we can, in a deliberate fashion, complete work on this legislation that now has gained bipartisan support, has gained additional votes from Republicans, including Senator CRAIG, Senator HAGEL, Senator MURKOWSKI, who have raised concerns, Senator DURBIN, Senator FEINSTEIN, and others on the Democratic side who have stood with us too since the end of last year in the hopes of improving the balance of the conference report. I think we do the country a service by enacting this legislation now with a commitment to continue to try to improve it wherever we can.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. FEINGOLD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator cannot reserve the right to object.

Is there objection?

Mr. SUNUNU. I ask consent that the Senator be allowed to make his point.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I object to raising the quorum call.

The PRESIDING OFFICER. Without objection, the quorum call is terminated, and the Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I ask unanimous—I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that I be recognized to speak at 11 a.m. on the motion to proceed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. Feingold. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAHAM). Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, it will come as no surprise that I would like to talk about the PATRIOT Act today, and certainly I listened to the remarks of the Senator from New Hampshire and have greatly enjoyed the experience of working with him on this issue for the last couple of years.

I, of course, come to a very different conclusion about the matters before us. I strongly oppose proceeding to the consideration of S. 2271, which is legislation introduced by some of my friends and colleagues to implement the deal on the PATRIOT Act that was struck by the White House last week.

Some may argue that there is no harm in passing a bill that could charitably be described as trivial. But protecting the rights of law-abiding Americans is not trivial, and passage of S. 2271 is the first step toward passage of the flawed PATRIOT Act conference report.

I will oppose both measures, and I am prepared to discuss at length my reasons for doing so. I do greatly respect the Senators who negotiated this deal, but I am gravely disappointed in the outcome. The White House would agree to only a few very minor changes to the same PATRIOT Act conference report that could not get through the Senate just back in this past December. These changes do not address the major problems with the PATRIOT Act that the bipartisan coalition has been trying to fix for the past several years.

In fact, the Senator from New Hampshire described the issues that brought us together, the points that brought us together. This agreement doesn't relate, in any significant way, to the provisions that we were concerned about that brought us together in a bipartisan way.

What came out of this agreement is, quite frankly, a figleaf to allow those who were fighting hard to improve the act to step down, claim victory, and move on. What a hollow victory that would be and what a complete reversal of the strong, bipartisan consensus that we saw in this body a couple months ago.

What we are seeing, I regret to say, is quite simply a capitulation on the intransigent and misleading rhetoric of the White House that sees any effort to protect civil liberties as a sign of weakness. Protecting American values is not weakness. Standing on principle is not weakness. Committing to fight terrorism aggressively without compromising the rights and freedoms this country was founded upon is not weakness either.

We have come too far and fought too hard to agree to reauthorize the PATRIOT Act without fixing any of the major problems with the act. A few insignificant face-saving changes don't cut it. So I cannot support this deal. I strongly oppose proceeding to legislation that would implement it.

I understand the pressure my colleagues have been under on this issue, and I again want to say I appreciate all the hard work they have done on the PATRIOT Act. It has been very gratifying to work on a bipartisan basis on this issue. It is unfortunate the White House is so obviously trying to make this into a partisan issue because it sees some political advantage in doing so. But whether the White House likes it, this will continue to be an issue where both Democrats and Republicans have concerns, and we will continue to work together for changes in the law. I am sure of that. But I will also continue to strongly oppose any reauthorization of the PATRIOT Act that doesn't protect the rights and freedoms of law-abiding Americans who have absolutely no connection whatsoever to terrorism.

This deal does not meet that standard. Frankly, Mr. President, it doesn't even come close. I urge my colleagues to oppose it and I, therefore, ask that they oppose even proceeding to this legislation.

I wanted to take some time to lay out the background and context for this ongoing debate over the PATRIOT Act, a debate that will not end with the reauthorization of the 16 provisions that are now set to expire March 10. And I want to discuss my concerns about this reauthorization deal with some specificity.

Mr. President, because I was the only Senator to vote against the PATRIOT Act in 2001, I want to be very clear from the start. I am not opposed to reauthorization of the PATRIOT Act. I supported the bipartisan compromise, the reauthorization bill the Senate passed last July without a single Senator objecting. I believe that bill should become law.

The Senate reauthorization bill is not a perfect bill, but it is actually a good bill. If that were the bill we considered back in December or the bill we were considering today, I would be speaking in support of it. In fact, we could have completed the process of reauthorizing the PATRIOT Act months ago if the House had taken up the bill that the Senate approved without any objection from any Senator on either side of the aisle.

I also want to respond to those who argue that any people who are continuing to call for a better reauthorization package want to let the PATRIOT Act expire. That is nonsense. Not a single Member of this body is calling for any provision—not only that the bill should not be reauthorized, but no Senator is calling for even one provision at all to actually expire. There are any number of ways we can reauthorize the act, while amending its most problematic provisions, and I am not prepared to support reauthorization without adequate reform.

Let me also be clear about how this process fell apart at the end of last year and how we ended up having to extend the PATRIOT Act temporarily past the end of 2005. In December, this body, in one of its prouder moments in recent years, refused to let through a badly flawed conference report. A bipartisan group of Senators stood together and demanded further changes. We made very clear what we were asking for. We laid out five issues that needed to be addressed to get our support.

Let me quickly read excerpts from a letter that we sent out explaining our concerns:

The draft conference report would allow the Government to obtain sensitive personal information on a mere showing of relevance. This would allow Government fishing expeditions. As business groups like the U.S. Chamber of Commerce have argued, the Government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy.

The draft conference report does not permit the recipient of a section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the First Amendment. The recipient of a section 215 order is entitled to meaningful judicial review of the gag order.

The draft conference report doesn't provide meaningful judicial review of a national security letter's gag order. It requires the court to accept as conclusive the Government's assertion that a gag order should not be lifted, unless the court determines the

Government is acting in bad faith. The recipients of NSLs are entitled to meaningful judicial review of a gag order.

The draft conference report does not sunset the NSL authority. In light of recent revelations about possible abuses of NSLs, the NSL provision should sunset in no more than four years so that Congress will have an opportunity to review the use of this power.

The draft conference report requires the Government to notify the target of a ''sneak and peek'' search no earlier than 30 days after the search, rather than within seven days, as the Senate bill provides and as pre-PATRIOT Act judicial decisions required. The conference report should include a presumption that notice will be provided within a significantly shorter period in order to better protect Fourth Amendment rights. The availability of additional 90-day extensions means that a shorter initial timeframe should not be a hardship on the Government.

Those are the key parts of the letter that we sent late last year. Now, you might ask, in this newly announced deal on the PATRIOT Act, have any of these problems been solved? Have any of the five problems identified by the SAFE Act authors been solved?

The answer is simple, Mr. President. The answer is: No, not a single one. Only one of these issues has been even partially addressed by this deal. The White House applied immense pressure and pulled out its usual scare tactics and succeeded in somehow convincing people to accept a deal that makes only a tiny substantive improvement to a bill that was actually rejected in December. This is simply not acceptable.

I want to explain in detail my biggest concerns with the conference report, as modified by S. 2271, the legislation that the majority leader is seeking to take up. First, I want to clear up one frequent misconception. I have never advocated repeal of any portion of the PATRIOT Act. In fact, as I have said repeatedly over the past 4 years, I supported most of that bill. There were many good provisions in that bill. As my colleagues know, the PATRIOT Act did a lot more than expand our surveillance laws. Among other things, it set up a national network to prevent and detect electronic crimes, such as the sabotage of the Nation's financial sector; it established a counterterrorism fund to allow the Justice Department offices, disabled in terrorist attacks, to keep operating; and it changed the money laundering laws to make them more useful in disrupting the financing of terrorist organizations. One section even condemned discrimination against Arab and Muslim Americans.

Even some of the act's surveillance sections were reasonable. One provision authorized the FBI to expedite the hiring of translators. Another added terrorism and computer crimes to the list of crimes for which criminal wiretap orders could be sought. And some provisions helped to bring down what has been called frequently ''the wall''—the wall that had been built up between intelligence and law enforcement agencies.

Whenever we start debating the PATRIOT Act, we hear a lot of people saying we must reauthorize the PATRIOT Act in order to ensure that the wall doesn't go back up. So let me make it clear. I supported the information-sharing provisions of the PATRIOT Act. One of the key lessons we learned in the wake of September 11 was that our intelligence and law enforcement agencies were not sharing information with each other, even where the statutes permitted it.

Unfortunately, the wall was not so much a legal problem as it was a problem of culture. That is not just my conclusion. The report of the 9/11 Commission made that very clear. I am sorry to report we have not made as much progress as we should have in bringing down those very significant cultural barriers to information sharing among our agencies. The 9/11 Commission report card that was issued toward the end of last year gave the Government a ''D'' for information sharing because our agencies' cultures have not changed enough. A statement issued by Chairman Kean and Vice Chairman Hamilton explained, ''You can change the law, you can change the technology, but you still need to change the culture. You still need to motivate institutions and individuals to share information.'' And so far, apparently, our Government has not met that challenge.

Talking about the importance of information sharing, as administration officials and other supporters of the conference report have done repeatedly, is part of a pattern that started several years ago on this issue of renewing or revising the PATRIOT Act. Rather than engage in a true debate on the controversial parts of the PATRIOT Act, as some in this body have done—to their credit—during this reauthorization process, many proponents of the PATRIOT Act point to the noncontroversial provisions of the act and talk about how important they are. They say this bill must be passed because it reauthorizes those noncontroversial provisions. But, that doesn't advance the debate; it muddies the waters because we all agree that those provisions should be continued.

The point is we don't have to accept bad provisions to make sure the good provisions become law, or continue to be law.

I hope I actually advance the debate. I want to spend some time explaining my specific concerns with the conference report and the deal that was struck to make a few minor changes to it. It is unfortunate the whole Congress could not come together, as the Senate did around the Senate's bipartisan compromise reauthorization bill. In July, the Senate Judiciary Committee voted unanimously in favor of a reauthorization bill that made meaningful changes to the most controversial provisions of the PATRIOT Act to protect the rights and freedoms of innocent Americans.

Shortly thereafter, that bill passed the full Senate by unanimous consent. It was not entirely easy for me to support the Senate bill, which fell short of the improvements contained in the bipartisan SAFE Act. But at the end of the day, the Senate bill actually contained meaningful changes to some of the most problematic provisions in the PATRIOT Act—provisions I have been trying to fix since October 2001—so I decided to support it. I made it very clear at the time, however, that I viewed the bill as the end point of negotiations, not the beginning. In fact, I specifically warned my colleagues ''that the conference process must not be allowed to dilute the safeguards in this bill.'' Obviously, I meant it, but it appears that people either were not listening or weren't taking me seriously. This conference report, as slightly modified by this deal, unfortunately does not contain many important reforms to the PATRIOT Act we passed in the Senate, so I cannot support it. And I will fight.

I wish to remind my colleagues of the serious problems with the PATRIOT Act which we have been discussing for several years now. Let me start with section 215, the so-called library provision, which has received probably the most public attention of any one of the controversial provisions. I remember when the former Attorney General of the United States called the librarians who were expressing disagreement with this provision ''hysterical.'' What a revelation it was when the Chairman of the Judiciary Committee, the Senator from Pennsylvania, opened his questioning of the current Attorney General during his confirmation hearing by expressing concerns about this provision of the PATRIOT Act, section 215. He got the Attorney General to concede that, yes, in fact, this provision probably went a bit too far and could be improved and clarified. And that was really an extraordinary moment. It was a moment that was very slow in coming, and it was long overdue.

I give credit to the Senator from Pennsylvania because it allowed us to start having a real debate on the PATRIOT Act. Credit also has to go to the American people, who stood up, despite the dismissive and derisive comments of Government officials, and said, with loud voices: The PATRIOT Act needs to be changed.

My colleagues know as well as I do that these voices came from the left and the right, from big cities and small towns across America. So far, more than 400 State and local governmental bodies have passed resolutions calling for revisions to the PATRIOT Act. I plan to read some of those resolutions on the floor during this debate, and there are a lot of them. Nearly every one mentions section 215.

Section 215 is at the center of this debate over the PATRIOT Act. It is also one of the provisions that I tried unsuccessfully to amend here on the floor in October of 2001. So it makes sense to start my discussion of the specific problems I have with the conference report with the infamous ''library'' provision.

Section 215 of the PATRIOT Act allows the Government to obtain secret court orders in domestic intelligence investigations to get all kinds of business records about people, including not just library records but also medical records and various other types of business records. The PATRIOT Act allowed the Government to obtain these records as long as they were ''sought for'' a terrorism investigation. That is all they had to say. That is a very low standard. It didn't require that the records concern someone who was suspected of being a terrorist or spy or even suspected of being connected to a terrorist or a spy. It didn't require any demonstration of how the records would be useful in the investigation. Under section 215, if the Government simply said it wanted records for a terrorism investigation, the secret FISA Court was required to issue the order—no discretion required to issue the order, period. To make matters worse, recipients of these orders are also subject to an automatic gag order. They cannot tell anyone that they have been asked for records.

Some in the administration and even in this body took the position that people shouldn't be able to criticize these provisions until they could come up with a specific example of ''abuse.'' The Attorney General has repeatedly made that same argument, and he did so again in December in an op-ed in the Washington Post when he dismissed concerns about the PATRIOT Act by saying that ''there have been no verified civil liberty abuses in the 4 years of the Act's existence.''

First of all, that has always struck me as a strange argument since 215 orders are issued by a secret court and people who receive them are prohibited by law from discussing them. In other words, the law is designed—it is actually designed—so that it is almost impossible for you to know if abuses have occurred. But even more importantly, the claim about lack of abuse just isn't credible anymore, given what we now know about how this administration views the surveillance laws that this body, this Congress, writes. We now know that for the past 4-plus years, the Government has been wiretapping the international communications of Americans inside the United States without obtaining the wiretap orders required by statute.

If we want to talk about abuses, I can't imagine a more shocking example of an abuse of power than to violate the law by eavesdropping on American citizens without first getting a court order based on some evidence, some evidence that they are possibly criminals or terrorists or spies. So I don't want to hear again from the Attorney General or anyone on this floor that this Government has shown it can be trusted to use the power we give it with restraint and care.

The Government should not have those kinds of broad, intrusive powers in section 215—not this Government, not any government. The American people shouldn't have to live with a poorly drafted provision which clearly allows for the records of innocent Americans to be searched and just hope that the Government uses it with restraint. A government of laws doesn't require its citizens to rely on the good will and good faith of those who have these powers, especially when adequate safeguards could easily be written into the law—easily be written into the law—without compromising their usefulness as a law enforcement or antiterrorist tool.

After lengthy and difficult negotiations, the Judiciary Committee came up with language that achieved that goal. It would require the Government to convince a judge that a person has some connection to terrorism or espionage before obtaining their sensitive records. When I say ''some connection,'' that is what I mean. The Senate bill's standard is the following: No. 1, that the records pertain to a terrorist or spy; No. 2, that the records pertain to an individual in contact with or known to a suspected terrorist or spy; or No. 3, that the records are relevant to the activities of a suspected terrorist or spy. That is the three-prong test in the Senate bill, and I believe it is more than adequate to give law enforcement the power it needs to conduct investigations while also sufficiently protecting the rights of innocent Americans. It would not limit the types of records the Government could obtain, and it does not go as far to protect law-abiding Americans as I would prefer, but it would make sure the Government cannot go on fishing expeditions into the records of completely innocent people.

The Senate bill would also give recipients of the 215 order an explicit, meaningful right to challenge those orders and the accompanying gag orders in court. These provisions passed the Senate Judiciary Committee unanimously after tough negotiations late into the night, and as anyone familiar with the Judiciary Committee knows, including the Chair, that is no mean feat, to get that done in the Judiciary Committee on any issue.

The conference report did away with this delicate provision. First and most importantly, it does not contain the critical modifications to the standard for section 215 orders. The Senate permits the Government to obtain business records only if it can satisfy one or more of the prongs of the three-prong test I just described. This is a broad standard, and it has a lot of flexibility. But it retains the core protection—the core protection—that the Government cannot go after someone who has no connection whatsoever to a terrorist or spy or their activities.

The conference replaces the three-prong test with a simple relevance standard. It then provides a presumption of relevance that the Government meets one of the three prongs. It is silly to argue that this is adequate protection against a fishing expedition. The only actual requirement in the conference report is that the Government show that those records are just relevant to an authorized intelligence investigation—that is all—just relevant to an authorized intelligence investigation. Relevance is a very broad standard that could arguably justify the collection of all kinds of information about all kinds of law-abiding Americans. The three prongs are just examples of how the Government can satisfy the relevance standard. That is not simply a loophole or an exception that swallows the rule; the exception is the rule. The exception basically destroys the meaning of the carefully considered three-prong test we all supported in the Senate.

I will try to make this as straightforward as I can. The Senate bill requires the Government to satisfy one of three tests. Each test requires some connection between the records and a suspected terrorist or spy. But the conference report says that the Government only is required to satisfy a new fourth test, and that test is only relevance and which does not require a connection between the records and a suspect. So the other three tests no longer provide any protections at all.

This issue was perhaps the most significant reason I and others objected to the conference report. So, naturally, the question today is, How was this issue addressed by the White House deal to get the support of some Senators? The answer is, It wasn't. Not one change was made on the standard for obtaining section 215 orders, and that is a grave disappointment. The White House refused to make any changes at all. Not only would it not accept the Senate version of section 215, which no Member of this body objected to back in July, it wouldn't make any change in the conference report on this issue at all.

Another significant problem with the conference report that was rejected back in December is that it does not authorize judicial review of the gag order that comes with a section 215 order. While some have argued that the review by the FISA Court of a Government application for a section 215 order is equivalent to judicial review of the accompanying gag order, that is simply inaccurate. The statute does not give the FISA Court any latitude to make an individualized decision about whether to impose a gag order when it issues a section 215 order. It is required by statute to include a gag order in every section 215 order. That means the gag order is automatic and permanent in every case.

This is a serious deficiency and one which very likely violates the First Amendment. In litigation challenging a similar, permanent, automatic gag rule in a national security letter statute, two courts have found first amendment violations because there is no individualized evaluation of the need for secrecy. I have those decisions here,

and perhaps I will have a chance to read them during this debate.

This question of judicial review of the section 215 gag order is one issue that is actually addressed in some way by the White House deal—addressed but not solved. Far from it. Under the deal, there is judicial review of section 215 gag orders, but it can only take place after a year has passed, and it can only be successful if the recipient of the section 215 order proves that the Government has acted in bad faith. As many of us have argued in the context of national security letters, that is a virtually impossible standard to meet. What we need is meaningful judicial review of these gag orders, not just the illusion of it.

I do acknowledge one change made by the White House deal that I do think is an improvement over the conference report. The conference report clarifies that the recipients of both section 215 orders and national security letters, which I will discuss in detail in a moment, can consult an attorney, but it also includes a provision that requires the recipients of these letters to notify the FBI if they consult with the attorney and to identify the attorney to the FBI. Obviously, this could have a significant chilling effect on the right to counsel. The deal struck with the White House makes clear that recipients of section 215 orders in national security letters would not have to tell the FBI if they consult with an attorney. That is an improvement over the conference report but, unfortunately, it is only one relatively minor change.

Let me now turn to a very closely related provision that has finally been getting the attention it deserves: national security letters, or NSLs—an authority that was expanded by section 358 and 505 of the PATRIOT Act. This NSL issue has flown under the radar for years, even though many of us have been trying to bring more public attention to it. I am gratified that we are finally talking about NSLs, in large part due to a lengthy Washington Post story published last year on the use of these authorities.

What are NSLs, and why are they such a concern? Let me spend a little time on this because it is quite important. National security letters are issued by the FBI to businesses to obtain certain types of records. So they are similar to section 215 orders, but with one very critical difference: the Government does not need to get any court approval whatsoever to issue them. It doesn't have to go to the FISA Court and make even the most minimal showing. It simply issues the order signed by the special agent in charge of a field office or some other FBI headquarters official.

NSLs can only be used to obtain certain categories of business records, in fairness, while section 215 orders can be used to obtain ''any tangible thing.''

But even the categories reachable by an NSL are quite broad. NSLs can be used to obtain three types of business records: subscriber and transactional information related to Internet and phone usage; credit reports; and financial records, a category that has been expanded to include records from all kinds of everyday businesses like jewelers, car dealers, travel agents and even casinos.

Just as with section 215, the PATRIOT Act expanded the NSL authorities to allow the Government to use them to obtain records of people who are not suspected of being, or even of being connected to, terrorists or spies. The Government need only certify that the documents are either sought for or relevant to an authorized intelligence investigation, a far-reaching standard that could be used to obtain all kinds of records about innocent Americans. And just as with section 215, the recipient is subject to an automatic, permanent gag rule.

The conference report does little to fix the problems with the national security letter authorities. In fact, it could be argued that it makes the law worse. Let me explain why.

First, the conference report does nothing to fix the standard for issuing an NSL. It leaves in place the breathtakingly broad relevance standard. Now, some have analogized NSLs to grand jury subpoenas, which are issued by grand juries in criminal investigations to obtain records that are relevant to the crime they are investigating. So, the argument goes, what is the big deal if NSLs are also issued under a relevance standard for intelligence investigations?

Two critical differences make that analogy break down very quickly. First of all, the key question is: Relevant to what? In criminal cases, grand juries are investigating specific crimes, the scope of which is explicitly defined in the criminal code. Although the grand jury is quite powerful, the scope of its investigation is limited by the particular crime it is investigating. In sharp contrast, intelligence investigations are, by definition, extremely broad. When you are gathering information in an intelligence investigation, anything could potentially be relevant. Suppose the Government believes a suspected terrorist visited Los Angeles in the last year or so. It might then want to obtain and keep the records of everyone who has stayed in every hotel in L.A., or booked a trip to L.A. through a travel agent, over the past couple years, and it could argue strongly that that information is relevant to a terrorism investigation because it would be useful to run all those names through the terrorist watch list.

I don't have any reason to believe that such broad use of NSLs is happening. But the point is that when you are talking about intelligence investigations, ''relevance'' is a very different concept than in criminal investigations. It is certainly conceivable that NSLs could be used for that kind of broad dragnet in an intelligence investigation. Nothing in current law prevents it. The nature of criminal investigations and intelligence investigations is different, and let's not forget that.

Second, the recipients of grand jury subpoenas are not subject to the automatic secrecy that NSL recipients are. We should not underestimate the power of allowing public disclosure when the Government overreaches. In 2004, Federal officials withdrew a grand jury subpoena issued to Drake University for a list of participants in an antiwar protest because of public revelations about the demand. That could not have happened if the request had been under section 215 or for records available via the NSL authorities.

Unfortunately, there are many other reasons why the conference report does so little good on NSLs. Let's talk next about judicial review. The conference report creates the illusion of judicial review for NSLs, both for the letters themselves and for the accompanying gag rule, but, if you look at the details, it is drafted in a way that makes that review virtually meaningless. With regard to the NSLs themselves, the conference report permits recipients to consult their lawyer and seek judicial review, but it also allows the Government to keep all of its submissions secret and not share them with the challenger, regardless of whether there are national security interests at stake. So you can challenge the order, but you have no way of knowing what the Government is telling the court in response to your challenge. The parties could be arguing about something as garden variety as attorney-client privilege, with no national security issues, and the Government would have the ability to keep its submission secret. That is a serious departure from our usual adversarial process, and it is very disturbing.

The other significant problem with the judicial review provisions is the standard for getting the gag rule overturned. In order to prevail, the recipient has to prove that any certification by the Government that disclosure would harm national security or impair diplomatic relations was made in bad faith. Again, this is a standard of review that is virtually impossible to meet. So what we have is the illusion of judicial review. When you look behind the words in the statute, you realize it's just a mirage.

Does the White House deal address these problems? It does not. In fact, as I have already discussed, it expands that same very troubling standard of review to judicial review section 215 gag orders.

The modifications to the conference report agreed to by the White House do contain one other purported change to one of the NSL statutes. This modification states that the FBI cannot issue an NSL for transactional and subscriber information about telephone and Internet usage to a library unless

the library is offering ''electronic communication services'' as defined in the statute. But that just restates the existing requirements of the NSL statute, which currently applies only to entities—libraries or otherwise—that provide ''electronic communication services.'' So that provision has no real legal effect whatsoever. Perhaps that explains why the American Library Association issued a statement calling this provision a ''figleaf'' and expressing disappointment that so many Senators have agreed to this deal.

I also want to take a moment to address, again, an argument that has been made about the NSL provisions of the conference report. It has been argued that many of the complaints I have about the NSL provisions of the conference report apply equally to the NSL provisions of the Senate bill and therefore, because I supported the Senate bill, by some convoluted theory my complaints are therefore invalid and I should support the conference report.

That just makes no sense. The NSL section of the Senate bill was one of the worst sections of the bill. I didn't like it then, and I don't like it now. But in the context of the larger package of reforms that were in the Senate bill, including the important changes to section 215 that I talked about earlier and the new time limit on ''sneak and peek'' search warrants that I will talk about in a moment, I was able to accept that NSL section even though I would have preferred additional reforms.

The argument has been made that after supporting a compromise package for its good parts, I guess the idea is I am supposed to accept a conference report that has only the bad parts of the package even though the good parts have been stripped out. That is just nonsense, and every Member of this chamber who has ever agreed to a compromise—and I must assume that includes every single one of us—knows it.

The other point I want to emphasize here is that the Senate bill was passed before the Post reported about the use of NSLs and the difficulties that the gag rule poses for businesses that feel they are being unfairly burdened by them. At the very least, I would think that a sunset of the NSL authorities would be justified to ensure that Congress has the opportunity to take a close look at such a broad power. But the conferees and the White House refused to make that change. Nor would they budge at all on the absurdly difficult standard of review, the so-called conclusive presumption; in fact, the White House insisted on repeating it in the context of judicial review of section 215 gag orders.

This points out a real problem I have with the White House deal. In our letter in December, my colleagues and I, Democratic and Republican, complained about the unfair standard for judicial review of the gag order in connection to NSLs. So how can the supporters of this deal argue that applying that same standard to challenges to the gag rule for section 215 orders is an improvement? A standard that was unacceptable in December has somehow miraculously been transformed into a meaningful concession. That is just spin. It doesn't pass the laugh test.

I suspect that the NSL power is something that the administration is zealously guarding because it is one area where there is almost no judicial involvement or oversight. It is the last refuge for those who want virtually unlimited Governmental power in intelligence investigations. And that is why the Congress should be very concerned and very insistent on making the reasonable changes we have suggested.

I next want to address ''sneak and peek'' searches. This is another area where the conference report departs from the Senate's compromise language, another area where the White House deal makes no changes whatsoever, and another reason that I must oppose the conference report.

When we debated the PATRIOT Act in December, the senior Senator from Pennsylvania made what seems on the surface to be an appealing argument. He said that the Senate bill requires notice of a sneak and peek search within 7 days of the search, and the House said 180 days. The conference compromised on 30 days. ''That's a good result,'' he says. ''They came down 150 days, we went up only 23. What's wrong with that?''

Let me take a little time to put this issue in context and explain why this isn't just a numbers game—an important constitutional right is at stake.

One of the most fundamental protections in the Bill of Rights is the fourth amendment's guarantee that all citizens have the right to ''be secure in their persons, houses, papers, and effects'' against ''unreasonable searches and seizures.'' The idea that the Government cannot enter our homes improperly is a bedrock principle for Americans, and rightly so. The fourth amendment has a rich history and includes in its ambit some very important requirements for searches. One is the requirement that a search be conducted pursuant to a warrant. The Constitution specifically requires that a warrant for a search be issued only where there is probable cause and that the warrant specifically describe the place to be searched and the persons or things to be seized.

Why does the Constitution require that particular description? For one thing, that description becomes a limit on what can be searched or what can be seized. If the magistrate approves a warrant to search someone's home and the police show up at the person's business, that search is not valid. If the warrant authorizes a search at a particular address, and the police take it next door, they have no right to enter that house. But of course, there is no opportunity to point out that the warrant is inadequate unless that warrant is handed to someone at the premises. If there is no one present to receive the warrant, and the search must be carried out immediately, most warrants require that they be left behind at the premises that were searched. Notice of the search is part of the standard Fourth Amendment protection. It's what gives meaning, or maybe we should say ''teeth,'' to the Constitution's requirement of a warrant and a particular description of the place to be searched and the persons or items to be seized.

Over the years, the courts have had to deal with Government claims that the circumstances of a particular investigation require a search without notifying the target prior to carrying out the search. In some cases, giving notice would compromise the success of the search by leading to the flight of the suspect or the destruction of evidence. The two leading cases on so-called surreptitious entry, or what have come to be known as ''sneak and peek'' searches, came to very similar conclusions. Notice of criminal search warrants could be delayed but not omitted entirely. Both the Second Circuit in U.S. v. Villegas and the Ninth Circuit in U.S. v. Freitas held that a sneak and peek warrant must provide that notice of the search will be given within 7 days, unless extended by the court. Listen to what the Freitas court said about such searches:

> We take this position because surreptitious searches and seizures of intangibles strike at the very heart of the interests protected by the Fourth Amendment. The mere thought of strangers walking through and visually examining the center of our privacy interest, our home, arouses our passion for freedom as does nothing else. That passion, the true source of the Fourth Amendment, demands that surreptitious entries be closely circumscribed.

So when defenders of the PATRIOT Act say that sneak and peek searches were commonly approved by courts prior to the PATRIOT Act, they are partially correct. Some courts permitted secret searches in very limited circumstances, but they also recognized the need for prompt notice after the search unless a reason to continue to delay notice was demonstrated. And they specifically said that notice had to occur within 7 en days.

Section 213 of the PATRIOT Act didn't get this part of the balance right. It allowed notice to be delayed for any reasonable length of time. Information provided by the administration about the use of this provision indicates that delays of months at a time are now becoming commonplace. Those are hardly the kind of delays that the courts had been allowing prior to the PATRIOT Act.

The sneak and peek power in the PATRIOT Act caused concern right from the start. And not just because of the lack of a time-limited notice requirement. The PATRIOT Act also broadened the justifications that the Government could give in order to obtain a sneak and peek warrant. It included

what came to be known as the ''catch-all'' provision, which allows the Government to avoid giving notice of a search if it would ''seriously jeopardize an investigation.'' Some think that that justification in some ways swallows the requirement of notice since most investigators would prefer not to give notice of a search and can easily argue that giving notice will hurt the investigation.

That is why it sounds to many like a catch-all provision.

Critics of the sneak and peek provision worked to fix both of the problems when they introduced the SAFE Act. First, in that bill, we tightened the standard for justifying a sneak and peek search to a limited set of circumstances—when advance notice would endanger life or property, or result in flight from prosecution, the intimidation of witnesses, or the destruction of evidence. Second, we required notice within 7 days, with an unlimited number of 21-day extensions if approved by the court.

The Senate bill, as we all know, was a compromise. It kept the catch-all provision as a justification for obtaining a sneak and peek warrant. Those of us who were concerned about that provision agreed to accept it in return for getting the 7-day notice requirement. And we accepted unlimited extensions of up to 90 days at a time. The key thing was prompt notice after the fact, or a court order that continuing to delay notice was justified.

That is the background to the numbers game that the Senator from Pennsylvania and other supporters of the conference report point to. They want credit for walking the House back from its outrageous position of 180 days, but they refuse to recognize that the sneak and peek provision still has the catch-all justification and unlimited 90-day extensions.

Here is the crucial question that they refuse to answer. What possible rationale is there for not requiring the Government to go back to a court within 7 days and demonstrate a need for continued secrecy? Why insist that the Government get 30 days free without getting an extension? Could it be that they think that the courts usually won't agree that continued secrecy is needed after the search is conducted, so they won't get the 90-day extension? If they have to go back to a court at some point, why not go back after 7 days rather than 30? From the point of view of the Government, I don't see the big deal. But from the point of view of someone whose house has been secretly searched, there is a big difference between 1 week and a month with regard to the time you are notified that some one came into your house and you had absolutely no idea about it.

Suppose, for example, that the Government actually searched the wrong house. As I mentioned, that's one of the reasons that notice is a fourth amendment requirement. The innocent owner of the place that had been searched might suspect that someone had broken in, might be living in fear that someone has a key or some other way to enter. Should we make that person wait a month to get an explanation rather than a week? Presumably, if the search revealed nothing, and especially if the Government realized the mistake and does not intend to apply for an extension, it will be no hardship, other than embarrassment, for notice to be given within 7 days.

That is why I'm not persuaded by the numbers game. The Senate bill was already a compromise on this very controversial provision. And there is no good reason not to adopt the Senate's provision. I have pointed this out repeatedly, and no one has ever come forward and explained why the Government can't come back to the court within 7 days of executing the search. Instead, they let the House get away with a negotiating tactic—by starting with 180 days, they can argue that 30 days is a big concession. But it certainly wasn't.

Let me put it to you this way: If the House had passed a provision that allowed for notice to be delayed for 1,000 days, would anyone be boasting about a compromise that requires notice within 100 days, more than 3 months? Would that be a persuasive argument? I don't think so. The House provision of 180 days was arguably worse than current law, which required notice ''within a reasonable time,'' because it creates a presumption that delaying notice for 180 days, 6 months, is reasonable. It was a bargaining ploy. The Senate version was what the courts had required prior to the PATRIOT Act. And it was itself a compromise because it leaves in place the catch-all provision for justifying the warrant in the first place. That is why I believe the conference report on the sneak and peek provision is inadequate and must be opposed. And the fact that this so-called deal with the White House does not address this issue is yet another reason why I see no reason why I, or anyone, should change their position on this.

Let me make one final point about sneak and peek warrants. Don't be fooled for a minute into believing that this power is needed to investigate terrorism or espionage. It's not. Section 213 is a criminal provision that applies in whatever kinds of criminal investigations the Government has undertaken. In fact, most sneak and peek warrants are issued for drug investigations. So why do I say that they aren't needed in terrorism investigations? Because FISA also can apply to those investigations. And FISA search warrants are always executed in secret, and never require notice. If you really don't want to give notice of a search in a terrorism investigation, you can get a FISA warrant. So any argument that limiting the sneak and peek power as we have proposed will interfere with sensitive terrorism investigations is a red herring.

I have spoken at some length about the provisions of this conference report that trouble me, and the ways in which the deal struck with the White House does not address those problems with the conference report. But to be fair, I should mention one aspect of the conference report that was better than a draft that circulated prior to the final signing of that report. The conference report includes 4-year sunsets on three of the most controversial provisions: roving wiretaps, the so-called ''library'' provision, and the ''lone wolf' provision of the Foreign Intelligence Surveillance Act. Previously, the sunsets on these provisions were at 7 years, and it is certainly an improvement to have reduced that number so that Congress can take another look at those provisions sooner.

I also want to acknowledge that the conference report creates new reporting requirements for some PATRIOT Act powers, including new reporting on roving wiretaps, section 215, ''sneak and peek'' search warrants, and national security letters. There are also new requirements that the Inspector General of the Department of Justice conduct audits of the Government's use of national security letters and section 215. In addition, the conference report includes some other useful oversight provisions relating to FISA. It requires that Congress be informed about the FISA Court's rules and procedures and about the use of emergency authorities under FISA, and gives the Senate Judiciary Committee access to certain FISA reporting that currently only goes to the Intelligence Committee. I am also glad to see that it requires the Department of Justice to report to us on its data mining activities.

But adding sunsets and new reporting and oversight requirements only gets you so far. The conference report, as it would be modified by S. 2271, remains deeply flawed. I appreciate sunsets and reporting, and I know that the senior Senator from Pennsylvania worked hard to ensure they were included, but these improvements are not enough. Sunsetting bad law in another 4 years is not good enough. Simply requiring reporting on the Government's use of these overly expansive tools does not ensure that they will not be abused. We must make substantive changes to the law, not just improve oversight. This is our chance, and we cannot let it pass by.

Trust of Government cannot be cannot be demanded or asserted or assumed; it must be earned. And this administration has not earned our trust. It has fought reasonable safeguards for constitutional freedoms every step of the way. It has resisted congressional oversight and often misled the public about its use of the PATRIOT Act. We know now that it has even authorized illegal wiretaps and is making misleading legal arguments to try to justify them. We sunsetted 16 provisions of the original PATRIOT Act precisely so we could revisit them and make necessary changes—to make improvements based on the experience of 4

years with the Act, and with the careful deliberation and debate that, quite frankly, was missing 4 years ago. This process of reauthorization has certainly generated debate, but if we pass the conference report, even with the few White House modifications, in some ways we will have wasted a lot of time and missed our opportunity to finally get it right.

The American people will not be happy with us for missing that chance. They will not accept our explanation that we decided to wait another 4 years before really addressing their concerns. It appears that is now an inevitable outcome. But I am prepared to keep fighting for as long as it takes to get this right. For now, I urge my colleagues to oppose the motion to proceed to this legislation to implement the White House deal. We can do better than these minor cosmetic changes.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. ALLEN pertaining to the introduction of S.J. Res. 31 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

Mr. ALLEN. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. THUNE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I understand the current business. I ask unanimous consent that my presentation appear in the RECORD as in Morning Business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. DORGAN are printed in today's RECORD under ''Morning Business.'')

Mr. DORGAN. Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SUNUNU). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, we are again enduring another filibuster of the PATRIOT Act. It is frustrating to me in the sense that I believe, properly understood, the PATRIOT Act provides tremendous protections to the people of the United States which don't now exist, and that those protections are crafted in a way which is sensitive to and consistent with the great civil liberties which we all cherish.

Two months ago, in December, we had a long debate, and since then, we have had to extend the PATRIOT Act for some time without reauthorizing it. Leaders have met and worked and dealt with some concerns. I know four Republican Senators who had concerns, and their concerns have been met. I think others also have likewise felt their concerns have been met. They are not large changes, but it made the Senators happy and they feel comfortable with voting for the bill today. That is good news. It is time to pass it.

I believe the American people expect that we will be able to have an up-or-down vote on this legislation. That has been blocked. There has been a majority in favor of the legislation for some time.

To get to cloture, we have to use 30 hours of debate, which will probably last throughout the day and into tomorrow. We will get there this time, I am confident. When we do, we will have a fairly strong vote, I believe, in favor of the legislation. We certainly should.

I urge my colleagues to work with us as best they can to move this forward in an expeditious way that allows for the up-or-down vote that is necessary.

I have talked about it a number of times, but I thought today I would focus on the question of why the PATRIOT Act matters, or are these just academic issues? Are they issues of an FBI agent wanting to violate our civil rights and spy on us? Some group in Government out here with black helicopters trying to find out what people are doing and then take away our liberties?

That is a great exaggeration. This is not what is at stake here. This bill is consistent with our great American liberties. It has not been held unconstitutional. Overwhelmingly, the powers given in this act are powers that law enforcement officers have had for years. They have been able to utilize them to catch burglars, murderers, drug dealers, and the like.

The local district attorney can subpoena my library records, medical records, and bank records. The Drug Enforcement Administration Act by administrative subpoena—not even a grand jury subpoena—can subpoena my telephone toll records. That has always been the law. That is the law today. We have provisions that allow our investigators to do that for terrorists. One would think somehow we are ripping the Constitution into shreds, that this is somehow a threat to our fundamental liberties. It is not so.

Let me point out I had the privilege, for over 15 years, to be a Federal prosecutor and work on a daily basis with FBI agents, DEA agents, and customs agents. These are men and women who love their country. They believe in our law. They follow the law. In my remarks, I will demonstrate these agents, unlike what is seen on television, follow what we tell them to do. If they do not follow what we tell them to do, they can be prosecuted, removed from the FBI, the DEA or the Federal agency for which they work. In fact, they know that and they remain disciplined and men and women of integrity who follow the law. Therefore, do not think, when we pass restrictions on how they do their work, that it is not going to be followed; that if it is a really big case, such as on ''Kojak,'' that they will go in and kick in the door without a warrant. That does not happen.

In 2001, we know at least 19 foreign terrorists were able to enter this country and plan and execute the most devastating terrorist attack this Nation has ever seen. The reasons the United States and terror investigators, the people we had out there at the time—FBI, CIA, and others—failed to uncover and stop the September 11 conspiracy have now been explored carefully by a joint inquiry of the House and Senate Intelligence Committees and other congressional committees and commissions, as well as the 9/11 Commission. These very commissions and inquiries have reviewed, in painstaking detail, the various pre-September 11 investigations that were out there—investigations, inquiries, preliminary inquiries—gathering information that raised people's suspicions about terrorism.

These investigations could have but unfortunately did not stop the September 11 plot. We have seen how close the investigators came to discovering or disrupting the conspiracy, only to repeatedly reach dead ends or obstructions to their investigations.

Those are the facts they found. Some of the most important pre-September 11 investigations, we know exactly what stood in the way of a successful investigation. It was the laws Congress wrote, seemingly minor, but, nevertheless, with substantive gaps in our antiterror laws, preventing the FBI from fully exporting the best leads it had on the al-Qaida conspiracy. One pre-September 11 investigation, in particular, came tantalizingly close to substantially disrupting or even stopping the terrorist plot. But this investigation was blocked by a flaw in our antiterror laws that has since been corrected by this PATRIOT Act being filibustered today.

This investigation involved Khalid Al Midhar. Midhar was one of the eventual suicide attackers on the American Airlines flight 77 which was flown into the Pentagon across the river from here, killing 58 passengers on the plane, the crew, and 125 people at the Pentagon. Patriots all.

An account of a pre-September 11 investigation of Midhar is provided in the 9/11 Commission Staff Statement No. 10. The 9/11 Commission looked at what information we did have prior to these events, and this is what the staff statement notes:

During the summer of 2001, a CIA agent asked an FBI official [a CIA agent responsible for foreign intelligence talked with an FBI official responsible for the security and law enforcement international] to review all of the materials from a Al Qaeda meeting in Kuala Lumpur, Malaysia one more time. The FBI official began her work on July 24th prior to September 11, 2001. That day she found the cable reporting that Khalid Al Mihdhar had a visa to the United States. A week later she found the cable reporting that Mihdhar's visa application—what was later discovered to be his first application—listed New York as his destination . . . The FBI official grasped the significance of this information.

The FBI official and an FBI analyst working on the case promptly met with INS representatives at the FBI Headquarters. On August 22nd, INS told them that Mihdhar had entered the United States on January 15t, 2000, and again on July 4, 2001 . . . The FBI agents decided that if Mihdhar was in the United States, he should be found.

At this point, the investigation of Khalid Al Midhar came up against the infamous legal ''wall'' that separated criminal and intelligence investigations at the time.

The Joint Inquiry Report of the House and Senate Intelligence Committees describes what happens next:

Even in late August 2001 when CIA told FBI, State, INS, and Customs that Khalid al-Mihdhar, Nawaf al-Yazmi, and two other ''Bin Laden-related individuals'' were in the United States, FBI Headquarters refused to accede to the New York field office recommendation that a criminal investigation be opened, which might allow greater resources to be dedicated to the search for the future hijackers . . .

The FBI has attorneys. They read our statutes, they read the laws we pass, they tell the agents what they can and cannot do because they are committed to complying with the laws we place upon them.

The FBI attorneys took the position that criminal investigators CANNOT be involved and that criminal information discovered in the intelligence case would be ''passed over the wall'' according to procedures. An agent in the FBI's New York field office responded by an e-mail, saying—

And I will quote the agent in a second but the scene is this: The FBI field office in New York concluded, after obtaining information from CIA that this individual, one of the hijackers, was a dangerous person and should be found. And the FBI field office—it is a big deal to be a special agent in charge of the New York field office, the biggest one in the country—recommended to FBI headquarters that we act on it. The FBI lawyers read the laws we passed and said ''you cannot.'' This is what the agent in New York responded when he heard this, sent it by e-mail. See if this doesn't chill your spine a bit.

He said:

Whatever has happened to this, someday someone will die and, wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems.

That was his reaction. It was a natural reaction.

How did we get this wall? It occurred in a spate of reform legislation after abuses of Watergate and the Frank Church committee hearings. They decided that in foreign intelligence—that is one thing, domestic is another—foreign intelligence does not always follow every rule. We ought to have a clear line between the FBI, which is over here in America, and we ought not give them information that the CIA had because they thought somehow this was going to deny us our civil liberties, which was not very clear thinking, in my view.

But these were good people. They were driven maybe by the politics of the time or what they thought was good at the time. They created this wall we have demolished with the PATRIOT Act—and good riddance it is. There is no sense in this.

The 9/11 Commission has reached the following conclusion about the effect the legal wall between criminal and intelligence investigations had on the pre-September 11 investigation of Khalid Al Midhar. This is what the 9/11 Commission concludes:

Many witnesses have suggested that even if Mihdhar had been found, there was nothing the agents could have done except follow him onto the airplane. We believe this is incorrect. Both Hazmi and Mihdhar could have been held for immigration violations or as material witnesses in the Cole bombing case.

This was our warship, the USS *Cole*, that was bombed by al-Qaida, killing a number of American sailors in Yemen; an attack on a warship of the United States by al-Qaida. What does it take to get our attention?

This report continues:

Investigation or interrogation of any of these individuals, and their travel and financial activities, also may have yielded evidence of connections to other participants in the 9/11 plot. In any case, the opportunity did not arise.

There was a realistic chance, had these rules not existed, rules that this PATRIOT Act eliminates, we would have been able to move forward with an investigation that had some prospect of actually preventing September 11 from occurring.

Some say, Jeff, you cannot say that for certain; and I am not saying it for certain, but I have been involved in investigations. You never know. You get a bit of information, you follow up on a lead or two, you get a search warrant, you surveil an activity, and all of a sudden you find that bit of evidence that takes you even further into an organization committed to a criminal activity or a terrorist plot you never knew existed. This is reality of law enforcement work today. We ask them every day to do this. And those investigating terrorist cases are giving their very heart and soul to it. They are trying every way possible, consistent with the law, not outside the law, to gather all the information they can to be successful.

So we know the PATRIOT Act was enacted too late to have aided in the pre-September 11 investigations, unfortunately. But it did raise our consciousness of the lack of wisdom on the reform legislation that was passed the year before—all with good intentions.

Let me mention another matter of a similar nature.

Another key pre-September 11 investigation was also blocked by a seemingly minor gap in the law. The case involves Minneapolis FBI agents' summer 2001 investigation of al-Qaida member Zacarias Moussaoui.

Hearings before the 9/11 Commission raised agonizing questions about the FBI's pursuit of Moussaoui. Commissioner Richard Ben-Veniste noted the possibility that the Moussaoui investigation could have allowed the United States to ''possibly disrupt the [9/11] plot.'' Commissioner Bob Kerrey, a former Member of this Senate, even suggested that with better use of the information gleaned from Moussaoui, the ''conspiracy would have been rolled up.''

Moussaoui was arrested by Minneapolis FBI agents several weeks before the 9/11 attacks. Do you remember that? He was arrested early that summer. Instructors at a Minnesota flight school became suspicious when Moussaoui, with little apparent knowledge of flying, asked to be taught how to pilot a 747. The instructors were concerned about it. They were on alert. They did what good citizens would do. Remember, this is before 9/11. But they were concerned about this oddity. They called the FBI in Minneapolis, which immediately suspected that Moussaoui might be a terrorist.

FBI agents opened an investigation of Moussaoui and sought a FISA that is the Foreign Intelligence Surveillance Court—national security warrant to search his belongings. But for 3 long weeks, the FBI agents were denied that FISA warrant. During that 3 weeks—you know the truth—the September 11 attack occurred.

After the attacks—and largely because of them the agents were then able to obtain an ''ordinary'' criminal warrant. So after the attacks, the agents were issued an ''ordinary'' criminal warrant to conduct the search. And when they conducted the search, his belongings then linked Moussaoui to two of the actual 9/11 hijackers and to a high-level organizer of the attacks who was later arrested in Pakistan.

The 9/11 Commissioners were right to ask whether more could have been done to pursue the case. This case was one of our best chances of stopping or disrupting the 9/11 attacks. Could more have been done? The best answer is probably no—based on the law that existed at that time.

The FBI agents were blocked from searching Moussaoui because of an outdated requirement of the 1978 FISA statute. Unfortunately, one of that statute's requirements was that the target of an investigation—if it were to be subject to a search under a FISA warrant, a foreign intelligence warrant—the agent had to have proof that he was not a lone-wolf terrorist, but he

must have been an agent of a foreign power or a known terrorist group. The law did not allow searches of apparent lone wolves, like Zacarias Moussaoui was thought to be at the time. They did not have the evidence to show otherwise.

So according to the FBI Director, the man in charge of the FBI, Robert Mueller—a former prosecutor of many years and a skilled lawyer—the gap in FISA probably would have prevented the FBI from using FISA against any of the September 11 hijackers. As the Director noted in his testimony before the Judiciary Committee:

> Prior to September 11, [of] the 19 or 20 hijackers . . . we had very little information as to any one of the individuals being associated with . . . a particular terrorist group.

So in other words, their lawyers in the FBI were saying: Well, you can't use the FISA. I know you want to. I know you have suspicions. And I know he looks like a terrorist. And we would like to search his belongings and see if he has any connection with any terrorist organization and maybe find out if they have any bombs or plans there. But you can't do it because we lack one little bit of proof. We can't prove he's connected to a terrorist group or a foreign nation. Sorry. Can't do it.

So the ''lone-wolf'' gap was fixed by the Intell reauthorization, and adopted as part of the PATRIOT Act. We need to reauthorize it and continue it into law.

What the various reports and commissions investigating the 9/11 attacks have shown us thus far is that where our antiterror laws are concerned, even seemingly little things, minor things—it might seem like they were OK at the time—can make a big difference, a life and death difference.

Before September 11, few would have thought that the lack of authority in FISA for the FBI to monitor and search lone-wolf terrorists might be decisive as to our ability to stop a major terrorist attack on U.S. soil. Indeed, that is true. We did not think about it. We did not think clearly about it.

And before September 11, though there was some attention to the problems posed by the legal wall between the intelligence-gathering agencies and the criminal investigative agencies, there was little sense of urgency to fix those matters. We accepted it. The FBI accepted it. It was the way you had to do business. You could not violate the law. I am sorry, you cannot investigate. You cannot participate with the CIA. Even though you may think he is a terrorist instigator, you cannot participate because there is a wall that the Congress created.

So at the time, these all seemed like legal technicalities—not real problems, the kind of problems that could lead to the deaths of almost 3,000 American citizens.

Today, we face the same challenge—recognizing why it is so important to fix small gaps in the law that can lead to large consequences and real-life disasters. Congress must not take the position that enough time has been passed since 9/11. Congress must not allow the information wall to be reconstructed by blocking the passage of the PATRIOT Act, or allow the tools we have given to our terrorism investigators by the PATRIOT Act to be taken away.

We must pass the PATRIOT Act reauthorization conference report. It is that simple. It permanently plugs most of the holes that we know existed in our terrorism laws. The report retains a few sunsets. I do not think they are necessary. I think they were good, sound changes in the law. But people are nervous that they might be abused, so they will automatically sunset if we do not extend them. OK, we will do that. If that will get some people more comfortable so they will pass this bill, we will do that.

And the report has a long list of additional civil liberties protections.

It is a compromise product that came out of our Judiciary Committee, I believe with a unanimous vote, and with a unanimous vote on the floor of the Senate, and went to conference. A few changes were made in conference. But where there were conflicts, overwhelmingly, the conflicts were decided in favor of the Senate product. And it was that product that finally hit the floor of the Senate in December. And we have had this filibuster going ever since. Hopefully, now we are in a position to end it.

I urge my colleagues to examine the nature of the PATRIOT Act as it is now configured. Read it carefully. Ask any questions you have. Make sure you understand what powers police have today in your hometowns all over America. And do not get confused that some of the things provided for might sound if—you listen to critics—as if they are new and far-reaching and utterly dangerous. They are part of everyday law enforcement—overwhelmingly, they are—and I believe are consistent with the highest commitment of American citizens to civil liberties.

I would also mention this. There are almost 3,000 people who are no longer with us today. They have zero civil liberties as a result of the most vicious and hateful attack on 9/11. That is not an academic matter. That is a fact. As that FBI agent said: Someday the American people are not going to understand how we were not able to intercept and investigate these groups.

Mr. President, I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. COBURN). The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I appreciate the Senator from Alabama joining the debate about the PATRIOT Act. I am going to respond very briefly to his remarks because I know there are other Senators on the floor who wish to speak about other issues, and I will defer to them in a moment.

But the Senator complained that the Senate is enduring another filibuster on this issue. I suppose that is one way to characterize it. What I would characterize it as is those of us who have concerns about this bill are enduring again speech after speech that has absolutely nothing to do with the issues at hand. That is irrelevant to the concerns we have raised about the PATRIOT Act.

Throughout his speech, the Senator from Alabama talked about issues that are not about the concerns we have raised. In fact, again, we are subjected to this idea that somehow those of us who raise these concerns are not concerned about what happened to this Nation on 9/11, that we do not feel exactly as much as the Senator from Alabama the pain and the tragedy of the loss of those 3,000 lives.

Not a single concern I have raised about this bill would have anything to do with this Government's ability to crack down on people who are trying to attack this country. In fact, that is the whole point. All of the changes we seek are to try to make sure we distinguish those who are completely innocent and unrelated to the terrorists from those who, in fact, are involved in espionage or terrorism.

The Senator talks about academic issues. But these are not academic issues. The fact is, when he brings up anything specific, he is changing the subject. He is bringing up noncontroversial issues. He talks about this wall. I talked about this in my speech before: the wall between the CIA and FBI. No Member of this body disputes that wall needed to be taken down. The wall has been taken down. I do not want it to be put back up. That is not in controversy.

And virtually the entire speech by the Senator from Alabama was about specific issues—the Midhar case and the Moussaoui case. All of that part of his speech was about something that is not in controversy. If he wants to offer that as a bill right now to simply continue that provision, he can put me down as a cosponsor. So it is completely irrelevant to what we are discussing and what my concerns are at this point.

The Senator says that somehow people are running around saying that the FBI is kicking down people's doors without a warrant. Nobody ever said that. I understand how the sneak-and-peek provisions work. We have been on this issue for a while. We know that in sneak and peek there has to be a warrant.

The question there is not whether there are warrantless searches of people's homes. The question is, when somebody is allowed, through a judicial order and a warrant, to come into somebody's house when they do not get notice of it, how long somebody should have to endure the possibility that their home has been searched and they

do not get notice after the fact that somebody came into their house when they were not there. So again, the argument is entirely unrelated to the concern.

The concerns we have raised are important, but they are limited. I am going to insist in this debate that we debate the concerns that we have put forward.

Finally, Mr. President, I am amused by the Senator talking about how we passed a bill in the Judiciary Committee by a unanimous vote. You bet we did. The Senator from Alabama voted for it and I voted for it. The whole Senate did not oppose the bill. Now every single thing I have advocated to change in the PATRIOT Act, in terms of the product of this body, is what I am advocating today. The Senator is acting as if those are dangerous provisions. Well, he voted for them. He voted for the stronger standard on 215. He voted for 7 days on the sneak-and-peek provisions. So how can they be dangerous if the Senator from Alabama actually voted for those provisions with me in the Judiciary Committee?

These are not dangerous changes. These are not irresponsible changes. These are not changes that have anything to do with legitimate efforts to try to stop the terrorists.

I so thank the Senator. I always enjoy debating him. He is the one Senator who has come down here and engaged on this today. I appreciate that. But I wish the debate could be about the questions that have arisen having to do with notice issues in sneak and peek, whether there is going to be a stronger provision on national security letters, whether there is going to be a provision on library business records to make sure it is tied to terrorists. The only reason I am doing this has to do with those kinds of provisions, not the issues the Senator from Alabama raised on which I happen to, in large part, agree.

Mr. SESSIONS. If the Senator will yield, I have talked about the details of this bill and individual complaints the Senator has about this or that provision in some detail. I will do so again. At this point, what we are facing is a filibuster of the motion to proceed that impacts the entire legislation.

I would ask the Senator if the Senator remembers that when the bill came out of the Senate, it said there would be a 7-day notice if there were a sneak-and-peek search warrant. The House bill had 180 days before notice would be given. The conferees moved far to the side of the Senate and made it a 30-day notice. Is that the basis of the Senator's desire to filibuster this entire bill, the difference between 7 and 30 days, recognizing in this body we seldom get anything exactly as we want it?

Mr. FEINGOLD. Mr. President, if the Senator is asking me a question, I am happy to respond.

The PRESIDING OFFICER. The Senator from Wisconsin controls the time.

Mr. FEINGOLD. I spoke at some length this morning about this issue which I call the numbers game on the sneak and peek. Of course, the sneak-and-peek provision is not my only concern. There are four or five areas. But I am very concerned about the length of time that somebody does not get notice that the FBI has come into their home without their being aware of it and the idea that somehow, after very careful court decisions said there will be exceptions to the requirements of the fourth amendment for perhaps 7 days—that was the standard in the court decisions upon which these unusual sneak-and-peek provisions were based—then to somehow have it become reasonable to have a whole month, a 30-day period, strikes me as extreme.

The 7-day standard was not picked out of the air. The 7-day standard was based on those court decisions which made the unusual law, in terms of our history as a country in the prohibition against unreasonable searches and seizures—the 7 days was based on those court decisions. So, yes, 30 days, four times more, is unreasonable.

After the Government has come into somebody's home and they have had 7 days, why is it that they should not have to come back and get permission to do that for a longer period of time? What is the need for the Government to have 30 days to not tell somebody to do that, when you remember that the Senate version you and I both voted for had the 7-day period?

Mr. SESSIONS. Well, we all don't get exactly what we want, I say to the Senator, No. 1.

No. 2, under current law, the so-called sneak-and-peek search by which you can, if you are investigating a major criminal enterprise or a terrorist group, actually conduct a search without actually telling the person the day you conducted it, the courts allow you as much time as they choose to allow you, for the most part. Some courts may have said 7 days. I am not aware at all that is the law in this country. It is what the judge says. This sets the standard. It says 30 days, and then they have to be repeated after that.

We have a bill on the floor that is a matter of life and death. I would ask my colleague to be somewhat more amenable to the fact that he won a pretty good victory in conference but just didn't get everything he wanted in conference by going from the House version of 180 down to 30.

Mr. FEINGOLD. Mr. President, I could say: Gee, it went from 180 to 30. I could tell my constituents in Spooner, WI: Look, the Government is going to come into your home under a special circumstance when you are not around, and it might not have even been the right house, and we are making this exception for 7 days because of emergencies in important situations. You and I both agree in certain circumstances that might occur. But the idea that for a whole month, that for 30 days the Government of the United States of America can come into your home without telling you they have been there, even if they have made a mistake, and they have no responsibility to tell a completely innocent person they made a mistake, to me is serious business.

If the Senator could make a credible argument as to why it is important for the Government to have a whole month after this 7-day period or 3 more weeks after the 7-day period, it would be one thing. But nobody has even made the argument that it is important for the Government to have 30 days to conduct this search. It is essentially an unreasonable period of time. I think it is important. The erring here should be on the side of people's liberty. It should be on the side of people protecting their homes from unreasonable searches and seizures. It should not be: What is the problem here? The Senator should be happy he got something better than the House version. I don't accept that, as somebody who believes the fourth amendment still has meaning.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. FEINGOLD. I yield to the Senator from West Virginia.

Mr. BYRD. Would the Senator yield and let me make a few remarks?

Mr. FEINGOLD. Absolutely.

The PRESIDING OFFICER. Does the Senator yield his time?

Mr. FEINGOLD. I yield my time.

Mr. LEAHY. Mr. President, I don't want to interfere with the Senator. I see quite a few pages of remarks there. I don't want to interfere with that, but I understood the Senator from Virginia and the Senator from Arkansas were going to introduce legislation, to be followed by remarks of mine on the bill before us in my capacity as the ranking member of the Senate Judiciary Committee, which has jurisdiction over this piece of legislation. My remarks will only be 5 or 6 minutes, but I wish to make them now or as soon as the Senators from Virginia and Arkansas have finished.

Mr. WARNER. Mr. President, there had been an informal agreement among colleagues, subject to the Senator who is principally on the floor at this point in time—and I will let him speak for himself—that we were going to introduce a bill. It would take 4 or 5 minutes for my remarks and 4 or 5 for the Senator from Arkansas. We were intending to do that at the conclusion of the colloquy between Senators FEINGOLD and SESSIONS.

Am I correct on that, the Senator had indicated that we could proceed?

Mr. FEINGOLD. Certainly, I had no objection to that.

The PRESIDING OFFICER. There is no recognized time agreement by the Chair at this time.

Mr. WARNER. Then I make a unanimous consent request that the Senator from Arkansas and I have 15 minutes equally divided, to be followed by Senator LEAHY for such time as he may

need and then the distinguished Senator from West Virginia.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. BYRD. Mr. President, reserving the right to object—I do not intend to object—I need to complete my remarks by 4:35. I have about 20 minutes here.

Mr. WARNER. Then I revise the request. The Senator from Arkansas and I can drop to, say, 10 minutes, and 5 minutes for the Senator from Vermont. Well, let's drop it down to 8 minutes——

Mr. LEAHY. I would need about 6 minutes. And that is cutting down a half-hour speech to accommodate the Senator from West Virginia, but I have been here for a couple hours ready to give this speech.

Mr. BYRD. Mr. President, I have waited many hours here many times. I never make a fuss about it. I will just leave the floor and——

Mr. WARNER. Mr. President, before the Senator leaves, what amount of time would the senior Senator from West Virginia like?

Mr. BYRD. I have 61 pages, large type. But that will take about 20 minutes—15, I think.

Mr. LEAHY. I have 5 or 6 pages of large type.

Mr. BYRD. My problem is, I need to get through by 4:30 or 4:35.

Mr. WARNER. Mr. President, I would suggest to my distinguished colleague from Arkansas, recognizing that Senator BYRD has an extenuating circumstance he has to take care of, I would be perfectly willing to step aside and regain into the queue following the Senator.

Mr. BYRD. The Senator is more than generous and more than kind.

Mr. LEAHY. The understanding is that I will be done by 4:15 to accommodate the Senator from West Virginia.

Mr. FEINGOLD. Mr. President, reserving the right to object, I ask to be recognized at the completion of the Senator's speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, last week, the Judiciary Committee held an important hearing. That hearing should be the beginning of the process of congressional oversight into what has been called ''the President's program.'' This is a domestic spying program into emails and telephone calls of Americans without a judge's approval, apparently conducted by the National Security Agency. Having participated in the hearing and reviewed the transcript of the Attorney General's testimony, I understand the fear that this administration is engaged in an elaborate cover-up of illegality. I urge them to come clean with us and the American people.

Perhaps their recent change of course and briefings with the full Intelligence Committees of the Senate and House will be a start. We need the whole truth not self-serving rationalizations. Since our hearing the Bush administration has had to adjust its course. That is good. They have had to acknowledge that they cannot simply ignore Congress and keep us in the dark about this illegal spying program. The classified briefings of the Intelligence Committees are a first step but cannot be used to cover up the facts through secrecy and arbitrary limitations. That is unacceptable. This domestic spying program has raised serious concern, not only among Democrats and Republicans here in Congress, but also among the Federal judges providing oversight over terrorist surveillance and even high-ranking Justice Department officials.

I commend Chairman SPECTER for beginning this investigation. He and I have a long history of conducting vigorous bipartisan oversight investigations. If the Senate is to serve its constitutional role as a real check on the Executive, thoroughgoing oversight is essential. Today, Chairman SPECTER has announced a second Judiciary Committee hearing will be held on February 28. We expect by then to have received answers to the written questions that have already been sent to the Attorney General.

The question facing us is not whether the Government should have all the tools it needs to protect the American people. Of course it should. The terrorist threat to America's security remains very real, and it is vital that we be armed with the tools needed to protect Americans' security. That is why I coauthored the PATRIOT Act 5 years ago. That is why we have amended the Foreign Intelligence Surveillance Act five times since 9/11 to provide more flexibility.

And that is why within days of the despicable attacks we passed the Authorization for the Use of Military Force on September 14, 2001, to send the United States Armed Forces into Afghanistan to get those who planned and carried out the vicious attacks on September 11.

We all agree that we should be wiretapping al-Qaida terrorists. Congress has given the President authority to wiretap legally, with checks to guard against abuses when Americans' conversations and email are being monitored. But instead, the President has chosen to proceed outside the law, without those safeguards. He has done so in a way that is illegal and illogical. It remains confusing that the Attorney General testified last week that the Bush administration has limited ''the President's program'' of illegal wire taps to calls with an international component.

The administration's rationale is not limited to calls and emails with an international component or to know al-Qaida operatives.

It sounded at our hearing as if what the Bush Attorney General and former White House counsel was saying is that this particular ''program'' is limited because they were afraid of public outrage. The Attorney General said as much to Senator KOHL and confirmed to Senator BIDEN that the Bush administration does not suggest that the President's powers are limited by the Constitution to foreign calls. Their descriptions of the President's program seem to have more to do with public relations than anything else. It was even branded with a new name in the last few days after it has been known for years as simply ''the President's program.''

Senator FEINSTEIN was right to observe after the Attorney General dodged and weaved and would not directly answer her questions: ''I can only believe—and this is my honest view—that this program is much bigger and much broader than you want anyone to know.'' The Attorney General's strenuous efforts to limit the hearing to ''those facts the President has publicly confirmed'' and ''the program that I am here testifying about today'' suggest that all of us must be skeptical about the secret games the Attorney General was playing through controlling the definition of ''the program'' to include only what he understood to exist at the beginning of last week. Senator FEINSTEIN was not fooled. None of us should be. Such limiting definitions are what the Bush Administration used to redefine ''torture'' in order to say that we do not engage in ''torture'' as they redefined it. These are the word games of coverup and deception. It is not al-Qaida surprised that our Government eavesdrops on its telephone calls and emails. Al-Qaida knows that we eavesdrop and wiretap. It is the American people who are surprised and deceived by the President's program of secret surveillance on them without a judge's approval for the last 5 years—especially, after the Attorney General, the Justice Department, the head of the NSA and the President have all reassured the American people over and over that their rights are being respected—when they are not.

I wish the President had effectively utilized the authority Congress did grant in the Authorization for the Use of Military Force in September 2001 to get Osama bin Laden and those responsible for the terrible attacks on September 11. That resolution was what it said it was, authorization to send troops to Afghanistan to get those responsible for 9/11. President Bush should have gotten Osama bin Laden when Congress authorized him to use our military might against al-Qaida in 2001 in Afghanistan. Instead of pursuing him to the end, he pulled our best forces out of the fight and diverted them to preparing for his invasion of Iraq.

Last week the Attorney General left key questions unanswered and left impressions that are chilling. Under his approach, there is no limit to the power the President could claim for so long as we face a threat of terrorism.

That is a real threat, which we have long faced and will continue to face for years if not decades toe. The Attorney General's testimony only hinted at the full dimensions of the Bush administration's illegality. He would not reassure us that Americans' domestic calls, emails, or first class mail have not been illegally spied upon.

He sought to choose his words carefully to say that he was only willing to speak about the President's ''program'' as it existed that day. That means we do not yet know the full dimensions of the program as it has evolved over time from 2001 to today. That means we do not know what other illegal activities the Bush administration is still endeavoring to hide from us.

Along with other Senators I asked about the lack of any limit to the legal rationale the Bush administration has embraced. Their rationalization for their actions is rationalization for any action. Under their view of the President's power, he can order houses and businesses searched without a warrant. Americans can be detained indefinitely. Detainees can be tortured. Property could be seized. Their rational is a prescription for lawlessness and the opposite of the rule of law.

Regrettably, the Attorney General's testimony last week left much to be desired. He did not provide convincing answers to basic questions, relevant information or the relevant underlying documents. Facts are a dangerous thing in a coverup. They are seeking to rewrite history and the law and control the facts that Congress can know.

The Bush administration refusal to provide the contemporaneous evidence of what the Congress and the Bush administration were indicating to each other regarding what the Authorization for the Use of Military Force was intended to mean, speaks volumes. Does anyone think that if they had any evidence in support of their after-the-fact rationalization they would hesitate to provide it, to trumpet it from the highest media mountain? Of course not.

Their failure to provide the information we asked for is not based on any claim of privilege, nor could it be. It is just a deafening, damning silence. So what is so secret about precisely when they came to this legal view, this rationalization of their conduct? Could it have come after the illegal conduct had been initiated? Could it have come after the President sought to immunize and sanitize the illegal conduct? Could it have come months or years later than the impression Attorney General Gonzales is attempting to create? Is that why the Bush administration is also refusing to provide to us the formal legal opinions of our Government, the binding opinions of the Office of Legal Counsel from 2001 and 2004 that we have also requested? Would review of those opinions show that the after-the-fact legal rationalizations changed over time and in 2001 were not those that the Attorney General has repackaged for public consumption in their current public relations campaign? Now that we know of the existence of the years-old secret domestic spying program that included the warrantless wiretapping of thousands of Americans, the Bush administration says that we should just trust them. That is a blind trust this administration has not earned. We have seen this administration's infamous and short-lived ''Total Information Awareness'' program and know how disastrous the FBI's Carnivore and Trilogy computer programs have been.

I have read recent reports of a secret Pentagon database containing information on a wide cross-section of ordinary Americans, including Quakers meeting in Florida and Vermont, and have gotten no satisfactory explanation of the Defense Department's Counterintelligence Field Activities that spy on law-abiding Americans. I read about a secret Homeland Security database and datamining activities, as well. Today we read about another database with the names of more than 325,000 terrorists but we do not know how many are Americans, how many are listed incorrectly or how the mistakes will be corrected.

There are new and disturbing reports that the Defense Department and the FBI have been monitoring U.S. advocacy groups working on behalf of civil rights or against the continuing occupation of Iraq.

This is all too reminiscent of the dark days when a Republican President compiled enemies lists and eavesdropped on political opponents and broke into doctors offices and used the vast power of the executive branch to violate the constitutional rights of Americans. That President resigned in disgrace after articles of impeachment were reported in the House of Representatives.

I was first elected to the Senate in the aftermath of Watergate and the White House ''plumbers'' and the illegality that led to the impeachment inquiry of President Nixon. The Foreign Intelligence Surveillance Act was passed in 1978 as part of the reform and reaction to those abuses. It was enacted after decades of abuses by the Executive, including the wiretapping of Dr. Martin Luther King, Jr., and other political opponents of earlier Government officials.

It was enacted after the White House ''horrors'' of the Nixon years, during which another President asserted that whatever he did was legal because he was the President. The law has been extensively updated in accordance with the Bush administration's requests in the aftermath of 9/11 and has been modified further in the last 4 years. It is the governing law. The rule of law and freedoms we enjoy as Americans are principles upon which this Nation was founded and what we are defending and fighting for abroad. This type of covert spying on American citizens and targeted groups on American soil betrays those principles and it is unacceptable.

What happens to the rule of law if those in power abuse it and only adhere to it selectively? What happens to our liberties when the government decides it would rather not follow the rules designed to protect our rights? What happens is that the terrorists are allowed to achieve a victory they could never achieve on the battlefield. We must not be intimidated into abandoning our fundamental values and treasured freedoms. We cannot let them scare us into giving up what defines us as Americans.

There can be no accountability unless the Republican Congress begins to do its job and joins with us to demand real oversight and real answers. Senators take an oath of office, too. We swear to support and defend the Constitution of the United States, to bear true faith and allegiance to it, and to faithfully discharge our duties so help us God. Let each Senator fulfill that pledge and the Senate can resume its intended place in our democracy.

Let us protect our national security and the national heritage of liberty for which so many have given so much.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Vermont for his characteristic kindness and courtesy. I thank the distinguished Senator who has been alone in opposing this act in the beginning, at a time when I wish I had voted as he did.

In June 2004, 10 peace activists outside of Halliburton, Inc., in Houston gathered to protest the company's war profiteering. They wore paper hats and were handing out peanut butter and jelly sandwiches, calling attention to Halliburton's overcharging on a food contract for American troops in Iraq.

Unbeknownst to them, they were being watched. U.S. Army personnel at the top secret Counterintelligence Field Activity, or CIFA, saw the protest as a potential threat to national security.

CIFA was created 3 years ago by the Defense Department. Its official role is forced protection; that is, tracking threat and terrorist plots against military installations and personnel inside the United States. In 2003, then Deputy Defense Secretary Paul Wolfowitz authorized a fact-gathering operation code named TALON, which stands for Threat and Local Observation Notice, which would collect raw information about suspicious incidents and feed it to CIFA.

In the case of the ''peanut butter'' demonstration, the Army wrote a report on the activity and stored it where? In its files. Newsweek magazine has reported that some TALON reports may have contained information on U.S. citizens that has been retained in Pentagon files. A senior Pentagon official has admitted that the names of these U.S. citizens could number in the thousands. Is this where we are heading? Is this where we are heading in

this land of the free? Are secret Government programs that spy on American citizens proliferating? The question is not, is Big Brother watching? The question is, how many big brothers have we?

Ever since the New York Times revealed that President George W. Bush has personally authorized surveillance of American citizens without obtaining a warrant, I have become increasingly concerned about dangers to the people's liberty. I believe that both current law and the Constitution may have been violated, not just once, not twice, but many times, and in ways that the Congress and the American people may never know because of this White House and its penchant for control and secrecy.

We cannot continue to claim we are a nation of laws and not of men if our laws, and indeed even the Constitution of the United States itself, may be summarily breached because of some determination of expediency or because the President says, ''Trust me.''

The Fourth Amendment reads clearly:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Congress has already granted the executive branch rather extraordinary authority with changes in the Foreign Intelligence Surveillance Act that allow the Government 72 hours after surveillance has begun to apply for a warrant. If this surveillance program is what the President says it is, a program to eavesdrop upon known terrorists in other countries who are conversing with Americans, then there should be no difficulty in obtaining a warrant within 72 hours. One might be tempted to suspect that the real reason the President authorized warrantless surveillance is because there is no need to have to bother with the inconveniences of probable cause. Without probable cause as a condition of spying on American citizens, the National Security Agency could, and can, under this President's direction, spy on anyone, and for any reason.

How do you like that? How about that? We have only the President's word, his ''trust me,'' to protect the privacy of the law-abiding citizens of this country. One must be especially wary of an administration that seems to feel that what it judges to be a good end always justifies any means. It is, in fact, not only illegal under our system, but it is morally reprehensible to spy on citizens without probable cause of wrongdoing.

When such practices are sanctioned by our own President, what is the message we are sending to other countries that the United States is trying to convince to adopt our system? It must be painfully obvious that a President who can spy on any citizen is very unlike the model of democracy the administration is trying to sell abroad.

In the name of ''fighting terror,'' are we to sacrifice every freedom to a President's demand? How far are we to go? Can a President order warrantless, house-to-house searches of a neighborhood where he suspects a terrorist may be hiding? Can he impose new restrictions on what can be printed, what can be broadcast, what can be uttered privately because of some perceived threat—perceived by him—to national security? Laughable thoughts? I think not.

This administration has so traumatized the people of this Nation, and many in the Congress, that some will swallow whole whatever rubbish that is spewed from this White House, as long as it is in some tenuous way connected to the so-called war on terror. And the phrase ''war on terror,'' while catchy, certainly is a misnomer. Terror is a tactic used by all manner of violent organizations to achieve their goal. This has been around since time began and will likely be with us until the last day of planet Earth.

We were attacked by bin Laden and by his organization, al-Qaida. If anything, what we are engaged in should more properly be called a war on the al-Qaida network. But that is too limiting for an administration that loves power as much as this one. A war on the al-Qaida network might conceivably be over someday. A war on the al-Qaida network might have achievable, measurable objectives, and it would be less able to be used as a rationale for almost any Government action. It would be harder to periodically traumatize the U.S. public, thereby justifying a reason for stamping ''secret'' on far too many Government programs and activities.

Why hasn't Congress been thoroughly briefed on the President's secret eavesdropping program, or on other secret domestic monitoring programs run by the Pentagon or other Government entities? Is it because keeping official secrets prevents annoying congressional oversight? Revealing this program in its entirety to too many Members of Congress could certainly have unmasked its probable illegality at a much earlier date, and may have allowed Members of Congress to pry information out of the White House that the Senate Judiciary Committee could not pry out of Attorney General Gonzales, who seemed generally confused about for whom he works—the public or his old boss, the President.

Attorney General Gonzales refused to divulge whether purely domestic communications have also been caught up in this warrantless surveillance, and he refused to assure the Senate Judiciary Committee and the American public that the administration has not deliberately tapped Americans' telephone calls and computers or searched their homes without warrants. Nor would he reveal whether even a single arrest has resulted from the program.

What about the first amendment? What about the chilling effect that warrantless eavesdropping is already having on those law-abiding American citizens who may not support the war in Iraq, or who may simply communicate with friends or relatives overseas? Eventually, the feeling that no conversation is private will cause perfectly innocent people to think carefully before they candidly express opinions or even say something in jest.

Already we have heard suggestions that freedom of the press should be subject to new restrictions. Who among us can feel comfortable knowing that the National Security Agency has been operating with an expansive view of its role since 2001, forwarding wholesale information from foreign intelligence communication intercepts involving American citizens, including the names of individuals to the FBI, in a departure from past practices, and tapping some of the country's main telecommunication arteries in order to trace and analyze information?

The administration could have come to Congress to address any aspects of the FISA law in the revised PATRIOT Act which the administration proposed, but they did not, probably because they wished the completely unfettered power to do whatever they pleased, the laws and the Constitution be damned.

I plead with the American public to tune in to what is happening in this country. Please forget the political party with which you may usually be associated and, instead, think about the right of due process, the presumption of innocence, and the right to a private life. Forget the now tired political spin that if one does not support warrantless spying, then one may be less than patriotic.

Focus on what is happening to truth in this country and then read President Bush's statement to a Buffalo, NY, audience on April 24, 2004:

> Any time you hear the United States Government talking about wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we are talking about chasing down terrorists, we are talking about getting a court order before we do so.

That statement is false, and the President knew it was false when he made it because he had authorized the Government to wiretap without a court order shortly after the 2001 attacks.

This President, in my judgment, may have broken the law and most certainly has violated the spirit of the Constitution and the public trust.

Yet I hear strange comments coming from some Members of Congress to the effect that, well, if the President has broken the law, let's just change the law. That is tantamount to saying that whatever the President does is legal, and the last time we heard that claim was from the White House of Richard M. Nixon. Congress must rise to the occasion and demand answers to the serious questions surrounding warrantless

spying. And Congress must stop being spooked by false charges that unless it goes along in blind obedience with every outrageous violation of the separation of powers, it is soft on terrorism. Perhaps we can take courage from the American Bar Association which, on Monday, February 13, denounced President Bush's warrantless surveillance and expressed the view that he had exceeded his constitutional powers.

There is a need for a thorough investigation of all of our domestic spying programs. We have to know what is being done by whom and to whom. We need to know if the Federal Intelligence Surveillance Act has been breached and if the Constitutional rights of thousands of Americans have been violated without cause. The question is: Can the Congress, under control of the President's political party, conduct the type of thorough, far-ranging investigation which is necessary. It is absolutely essential that Congress try because it is vital to at least attempt the proper restoration of the checks and balances. Unfortunately, in a Congressional election year, the effort will most likely be seriously hampered by politics. In fact, today's Washington Post reports that an all-out White House lobbying campaign has dramatically slowed the congressional probe of NSA spying and may kill it.

I want to know how many Americans have been spied upon. Yes, I want to know how it is determined which individuals are monitored and who makes such determinations. Yes, I want to know if the telecommunications industry is involved in a massive screening of the domestic telephone calls of ordinary Americans like you and me. I want to know if the U.S. Post Office is involved. I want to know, and the American people deserve to know, if the law has been broken and the Constitution has been breached.

Historian Lord Acton once observed that:

> Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity.

The culture of secrecy, which has deepened since the attacks on September 11, has presented this Nation with an awful dilemma. In order to protect this open society, are we to believe that measures must be taken that in insidious and unconstitutional ways close it down? I believe that the answer must be an emphatic ''no.''

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to be recognized at the conclusion of the remarks of the Senator from Virginia and the Senator from Arkansas.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Virginia is recognized.

Mr. WARNER. I thank the Chair.

(The remarks of Mr. WARNER and Mr. PRYOR pertaining to the introduction of S. 2290 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. FEINGOLD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. STABENOW. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan is recognized.

PRESCRIPTION DRUGS

Ms. STABENOW. Mr. President, I came to the Senate back in 2001 focused in part on lowering the cost of prescription drugs and the importance of making sure every American senior, every person with disabilities on Medicare, had the opportunity to receive their medicine through the Medicare system, which has been so very successful. We had a lot of work, a lot of effort go back and forth on the Medicare bill as time went on, related to Medicare Part B, and it changed from being about our seniors to being about what was best for those in the industry, particularly the pharmaceutical industry. We began to see a bill that was written, in fact, for the industry rather than for our seniors.

I stand here this evening calling on my colleagues to join with us on this side of the aisle to fix this, to get it right for people. We have a Medicare prescription drug plan that has been adopted that costs twice as much for the American taxpayer as it should, much more for most seniors than it should, and provides less in options and less in medicines than it should. It makes no sense to continue with something which is so confusing, with the cost gaps, which does not allow our poorest seniors to get the medicines they need or, if they do, they are paying more than they did last year. It makes no sense.

We stand here getting ready to go on a recess next week without having fixed the basics of what is wrong with this program. We know that at the beginning of January, our poorest seniors on Medicaid were switched over to the Medicare Program. But too much of the time the computers didn't work, the pharmacists did not have records in the system, and seniors didn't know what plans they were in. They were arbitrarily put into a plan that may not cover their medicines today or costs much more than it should. We saw the administration indicate that while this was being fixed, the pharmacists should go ahead and give people their medicines for the first 30 days. In many cases, States have stepped in to try to continue to help our seniors to get the life-saving medicine they desperately need while all of this gets figured out.

At the end of 30 days, it wasn't figured out. That was the end of January. Here we are now on February 15, and we are into a 2-month extension, a 60-day extension to try to figure out this mess for our seniors.

Pharmacists are told to continue giving people their medicine. Of course, it is the right thing to do. People should not be losing their medicine. But now I am getting calls from pharmacists who are deeply concerned because they are trying to decide whether their small family-owned pharmacy, for example, will be able to continue to pay its own bills without reimbursement or they are going to have to choose whether to help the people in the community they care about, whom they were set up to serve, and want to serve and are serving.

The question is, What is going to happen? Are the pharmacies going to get paid? Are the States going to get reimbursed? What happens to the seniors at the end of March? Are we going to see another 30 days or another 60 days because of a failed system that is confusing? We need to fix this, and it can be fixed.

On this side of the aisle, Senator JAY ROCKEFELLER has legislation many of us cosponsored to make sure that States are reimbursed. We need to make sure those who are providing the medicines now will get this worked out and will be reimbursed.

We also have another series of issues that need to be addressed with this system. People have until May 15, 3 months from today, to decide whether they are going to sign up to be a part of the Medicare system in terms of their prescription drugs and wade through all of this. In Michigan, there are about 65 plans. God bless them if they can get through it, or their children or friends can help them get through all of this and figure out the plan they are going to be on. But once they figure it out, they are locked into the plan after May 15 for a year. Shockingly, the people they sign up with aren't locked into the same agreement for a year. The drug companies can change what is covered. They don't have to cover the plan.

If my mother has worked through a plan that covers four medicines, for example, after May 15 if they decide they will only cover two, or maybe they decide not to cover any of them, that is OK under the current system. It is not OK for the American people. It is not OK for people who are counting on us to have a plan that works.

What if they want to raise the price? You lock into a system, looks like a good deal, figure out the premium that works for you, figure out the copay, what is covered, after May 15 you are

locked in for a year. But the plan could change the price, and it could change it every day, if they wanted to. That is outrageous, absolutely outrageous.

A colleague of mine, Senator BILL NELSON, introduced a bill I am cosponsoring with others to extend that May 15 date to the end of the year to at least give people a year to figure out what is going on.

But in addition to that, we need to say once somebody is locked into a plan, everybody is locked in. You can't say I am obligated or my mother is obligated to pay a monthly premium and a copay on a plan they sign up for but the other side can change the contract, change the price, and no longer cover the medicine. That is outrageous. It makes absolutely no sense whatsoever.

I have an example of a gentleman with MS who called my office a couple of weeks ago. He worked through all of the plans and made a determination on a plan that would cost him $50 a month for his medicine. He got ready to go to the pharmacy and thought he would call to make sure the price he had was right. He called and found out that, no, that has been changed now. It is over $500. He is fortunate because he could and did drop that plan because it is not May 15. If that were after May 15, this gentleman with MS would be locked into a plan costing him over $500 for something he thought he was getting for $50. Who in their right mind would say that is OK? We can do better than that. We have to do better for our seniors and for the people with disabilities.

To add insult to injury, we have a situation where negotiating for group prices is actually prohibited in this new Medicare bill. How does that make any sense at all? You are talking about over 31 million people on Medicare. That would be a pretty good group discount if they were negotiating together for a group discount. But that is prohibited. So we are locking in the highest possible prices. The taxpayers are paying more, the seniors are paying more, and people with disabilities are paying more because they are not allowed to do group pricing.

The VA, on behalf of veterans, doesn't pay top dollar. They get about a 40-percent discount. That makes sense. There is no reason why that should not be happening here with a plan that in fact is written for seniors and the disabled.

What happened? What happened when people didn't get the choices they wanted, which is the one I am advocating for, which is a real benefit to Medicare—sign up, go to your pharmacy, know what your prices are, like Medicare. What happened? Why didn't that plan get enacted instead of this privatized approach forcing people to go through private insurance companies or HMOs to get the help they need? How did that happen? How did it happen that Medicare is stopped from negotiating the best deal? How did that happen? How did it happen that seniors have to sign up for a plan and be locked in for a year, but the people on the other side providing the benefit, getting the premium and the copay, don't have to have prices that are locked in for a year or the range of medicines they will cover locked in for a year?

When you look at what happened, unfortunately, this is the legislative process at its worst. Unfortunately, for somebody who came here wanting desperately to make sure that we are providing low-cost medicine for everybody through various means but certainly for our seniors, this was an extremely disturbing process that occurred that resulted in this new law.

The reality is while we were negotiating on the Senate floor, the head of the Centers for Medicare and Medicaid was at the same time negotiating himself a job with a pharmaceutical industry. We now know that at least 10 people from the administration working in Medicare and Medicaid have now gone out to work with the industry. We also know that in the House, one of the committee chairs, at the same time he was negotiating this bill, was negotiating a salary for himself of $2.5 million to go to work for PhRMA, which is a lobbying arm for the brandname pharmaceutical industry. That is outrageous. When we talk about reform, when we talk about what needs to be done here, we need to start with that. That is the kind of thing that, in fact, we address in our honest government bill that has been passed and submitted by the Democrats in the Senate. We need to deal with that.

But the reality is we have a bill that was written for the interests of people in the industry, not for seniors and the disabled in this country, and not for the taxpayers either.

When you lock in the biggest prices possible, you are not looking out for taxpayers' interests any more than looking out for the interests of seniors or the disabled. This needs to be fixed. There needs to be a sense of urgency about this.

I know at home there is an outrage about this. This needs to be fixed. There are those potentially who can be helped by this bill. I hope everybody who can receive assistance under this new benefit will be able to wade through the bureaucracy and figure out or have somebody help them get some help for themselves. Every day, there is a sense of urgency for people, but we have to fix this overall.

In my book, we need to start over and get this right and decide we are going to worry about the person right now, at almost 7 o'clock tonight, on a Wednesday night, who has probably had dinner already and is sitting down maybe deciding what medicine they take tonight—or do I have my pills for tomorrow? Do I cut them in half so they will last longer? Maybe I can take them every other day. Maybe I am a wife whose husband takes the same blood pressure medicine and can share, even though it is dangerous for your health to do that.

This is the United States of America. We can do better than that. We can do better than a Medicare bill that costs too much and provides too little and does not put Americans first. We can do better than that.

My colleagues on this side of the aisle stand ready and are going to speak out every single day to create a sense of urgency about getting this done. We need to work together. Things only happen when we work together on a bipartisan basis. We need to do that. But we cannot let another month or two go by without having fixed the things that are right in front of us. We can't let time go by and not have dealt with the issues that lock people into a system that can raise their prices and take away their medicine while they have to continue to pay. That is outrageous.

There is a better way to do this through Medicare. That is the way it should have been done from the very beginning. There is absolutely no reason we can't go back and get this right.

I hope everyone who cares about this issue will be speaking out, will do everything they can to raise this issue and call on us to act and get this right. This is not the finest hour of this Congress or this administration. We can do much better than what has been done.

I am going to continue to do everything in my power to both fix this in the short run for people and then make sure we have a real prescription drug benefit for people as we go forward. Medicine isn't a frill. This is about life and death for too many people. We need to go back and get this right. I am hopeful that, working together, we will.

Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COBURN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COBURN. Mr. President, I want to speak a few minutes after hearing the Senator from Michigan. I thought, first of all, her accusations have to be answered. First of all, she made a fairly serious charge on a friend of mine, the Congressman from Pennsylvania, Bucks County, Jim Greenwood, and implied that not only was his vote and his work in trying to secure prescription drugs for seniors part of a deal with the pharmaceutical industry, which I think there is no foundation for whatever, and I believe it also probably is in very poor taste for this Senate to start hanging out people who have left and demeaning their name on the basis of whom they go to work for. If we counted on both sides, we would find plenty of ammunition to do that. I think that is probably not the decorum of the Senate. I hope we will not hear that again.

I have lots of differences with former Congressman Greenwood in terms of

social issues, but I have always found him to be an honorable man, above board and straightforward in both his intellect and the way he carried himself. To disadvantage his reputation the way that was done I find unconscionable.

No. 2, the Senator from Michigan did run a campaign on lowering prescription drugs. Her campaign was increased competition and reimportation, as well as Government control of every aspect of the pharmaceutical industry to lower the prices.

The program this country has I would not have supported. I do not believe it is the Government's role for us to supply to seniors in this country, but this program will supply drugs at half the cost of what most seniors who have been paying for their prescription drugs pay. To scare seniors into thinking they have a prescription drug program and they will not have one in 2 months or 2 weeks or 6 months is the type of tactic that undermines the integrity of this Senate and is one of the reasons people in this country are losing confidence in elected representatives. Quite frankly, the difference is going to be a lot of seniors today are having medicines they would not otherwise have.

I don't like it, but it is understandable, and we must recognize any program of this magnitude, when it starts, is going to have trouble. They are having far less problems now. The vast majority of people and the vast majority of pharmacists are not having a problem with the program. It will still have some bugs for the next couple of months. It will get better every month.

The goal of the program was to make sure those people who were choosing between food and medicine did not have to make that choice. Even though I'm not a fan of this program, it is accomplishing its goals. To scare seniors with this tactic, to try to scare seniors into thinking something they have now will go away, is unconscionable and is beyond the decorum of the Senate.

I yield the floor.

Mr. LEAHY. Mr. President, as one of the authors of the original USA PATRIOT Act, as someone who voted to reauthorize an improved version of the act back in July 2005, and as an American concerned with our security, I am glad that we are making progress, but I have some misgivings about the bill being considered today. I will vote to proceed and hope there is an opportunity to improve the bill and the PATRIOT Act reauthorization even further.

I believe that the PATRIOT Act provides important and valuable tools for the protection of Americans from terrorism. These matters should be governed by law and not by whim. Legislative action should be the clear and unambiguous legal footing for Government powers.

I am glad that the sunsets that Congressman Armey and I insisted be included in the 2001 act brought about reconsideration and some refinement of the powers authorized in that measure. Those sunsets contributed to congressional oversight. Without them I expect the Bush administration would have stonewalled our requests for information and for review of the way they were implementing the statute. The sunsets were the reason we have been going through a review and renewal process over the last few months. Now the challenge to Congress is to provide the effective oversight that will be needed in the days ahead and to ensure that there is effective court review of actions that affect the rights of Americans.

Several specific provisions of this bill reflect modest improvement over both the original PATRIOT Act and the reauthorization proposal initially produced by the House-Senate conference. It is with these improvements in mind that I will support Senator SUNUNU's bill.

These improvements, like those contained in the conference report, were hard won. The Bush administration pursued its usual strategy of demanding sweeping Executive powers and resisting checks and balances. As usual, it was short on bipartisan dialogue and long on partisan rhetoric. And as usual, the Republican majorities in the House and Senate did their utmost to follow the White House's directives and prevent any breakout of bipartisanship. But a ray of bipartisanship did break out, and this reauthorization package is the better for it.

Senator SUNUNU's bill modifies a provision I objected to that would have required American citizens to tell the FBI before they exercise their right as Americans to seek the advice of counsel. Chairman SPECTER and I worked together to correct this provision and Senator SUNUNU has improved it further. I commend his efforts in this regard.

Another important change provided by the Sununu bill builds upon another objection I had and an idea I shared with him to ensure that libraries engaged in their customary and traditional activities not be subject to national security letters as Internet service providers. This is a matter I first raised and feel very strongly about. I commend Senator SUNUNU for the progress he has been able to make in this regard. The bill is intended to clarify that libraries as they traditionally and currently function are not electronic service providers, and may not be served with NSLs for business records simply because they provide Internet access to their patrons. Under this clarification, a library may be served with an NSL only if it functions as a true Internet service provider, as by providing services to persons located outside the premises of the library, but this is an unlikely scenario. In most if not all cases, if the Government wants to review library records for foreign intelligence purposes, it will need a court order to do so. The language I proposed to Senator SUNUNU in this regard was less ambiguous than that to which the Bush administration would agree. Still, my intent, Senator SUNUNU's intent, and the intent of Congress in this regard should be clear. It is to strengthen the meaning and ensure proper implementation of this provision that I will support this bill. As a supporter, I trust my intent will inform those charged with implementing the bill and reviewing its proper implementation.

It is regrettable that the Bush administration would not engage all of us in a bipartisan conversation on ways we could improve the bill. The White House Counsel only spoke to the Republican Senators. In that setting, they negotiated to achieve what they viewed as improvements. It is less than we would have liked. I know that the Republican Senators who worked on this bill were well intentioned and I commend their efforts. Regrettably, I note that one set of changes included in this bill I strongly oppose.

The Bush administration has used the last round of discussions with Republican Senators to make the gag order provisions worse, in my view, by forbidding any challenge for one year. The Bush administration has simply refused to listen to reason on this and insists on this thumb on the scale of justice. In addition, the bill continues and cements into law procedures that, in my view, unfairly determine challenges to gag orders. The bill allows the Government to ensure itself of victory by declaring that, in its view, disclosure ''may'' endanger national security or ''may'' interfere with diplomatic relations. This is the type of provision to which I have never agreed in connection with national security letters or section 215 orders. It will serve to prevent meaningful judicial review of gag orders and, in my view, is wrong.

I will continue to work to improve the PATRIOT Act. I will work to provide better oversight of the use of national security letters and to remove the un-American restraints on meaningful judicial review. I will seek to monitor how sensitive personal information from medical files, gun stores, and libraries are obtained, used, and retained. While we have made some progress, much is left to be done.

In 2001, I fought for time to provide some balance to Attorney General Ashcroft's demands that the Bush administration's antiterrorism bill be enacted in a week. We worked hard for 6 weeks to make that bill better and were able to include the sunset provisions that contributed to reconsideration of several provisions over the last several months. Last year I worked with Chairman SPECTER and all the members of the Judiciary Committee and the Senate to pass a reauthorization bill in July. As we proceeded into the House-Senate conference on the measure, the Bush administration and congressional Republicans locked Democratic conferees out of their deliberations and wrote the final bill.

That was wrong. In December, working with a bipartisan group of Senators, we were able to urge reconsideration of that final bill. Senators SUNUNU and CRAIG were able to use that opportunity to make some improvements. I commend them for what they were able to achieve and hope that my support for their efforts has been helpful. I wish that along the way the Bush administration had shown a similar interest in working together to get to the best law we could for the American people. When the public's security and liberty interests are at stake, it seems especially prudent and compelling to me that every effort should be made to proceed on a bipartisan basis toward constructive solutions. Instead, the White House has chosen once again to try to politicize the situation.

Since the conference was hijacked, I have tried to get this measure back on the right track. We have been able to achieve some improvements, and that is no small feat given the resistance by this White House to bipartisan suggestions. I regret that this bill is not better and that the intransigence of the Bush administration has prevented a better balance and better protections for the American people. I will continue to work to provide the tools that we need to protect the American people. I will continue to work to provide the oversight and checks needed on the use of Government power and will seek to improve this reauthorization of the PATRIOT Act.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I understand an agreement has been reached to have the cloture vote on the motion to proceed tomorrow morning and then a cloture vote on the bill on that Tuesday after we return from the recess.

I point out the agreement essentially implements the schedule that would have been followed had I required the Senate to go through all the procedural hoops necessary to reach a vote on the White House deal. It, of course, maintains the 60-vote threshold for passing this legislation.

I thank the two leaders for working with me. I have no desire to inconvenience my colleagues or force votes in the middle of the night, as I understand the majority leader was threatening.

I have been trying all day to get an agreement to allow debate and votes on a small number of amendments to this bill. I do not understand what the majority leader is afraid of or concerned about in rejecting this reasonable request. So while I do not object to the agreement that will be propounded in a few minutes, I hope once we are on the bill tomorrow, I will be able to offer amendments and have them voted on.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, we are at a continuation of a sequence of events which has resulted in a lot of delay, a lot of postponement, really reflecting these insufferable attempts to put off the Nation's business with obstruction and stalling. It is disturbing to me because we have so many issues to address in securing America's future, securing America's future in terms of security, securing America's future when it comes to looking at health care issues, education issues, securing America's prosperity as we look at competition and innovation and things we can do to invest in math and science education, and making us more competitive and creating jobs with respect to China and India.

There are so many issues, many of which were outlined by the President of the United States in the State of the Union Address. Yet we are going through this stall ball, which is reflected now on the PATRIOT Act, where we have the PATRIOT Act reauthorization being filibustered by the Democrats, which started in December when we had a filibuster on the reauthorization, and the filibuster now on the motion to proceed. Now, with that continued postponement and filibuster, there is no way to complete this reauthorization of the PATRIOT Act before we go on recess. There is no way to do it using the tools of the Senate, using the tools of the filibuster.

And a filibuster I can understand if you are shaping the bill or if the outcome is not absolutely predetermined. But the outcome here is absolutely predetermined. There will be overwhelming support in this body for this bill. It is important to the safety and security of the American people. It breaks down barriers between the intelligence community and our law enforcement community, and it does so protecting the civil liberties of Americans.

There is overwhelming support. The outcome is determined. Yet we have been in a quorum call for most of the day, and using the rules of the Senate. Again, people say: Well, if it is a filibuster, why aren't people talking all the time? With the rules of the Senate, you do not have to be talking, but you control the Senate in terms of time. With that, we are able to file cloture motions, and then you wait another 30 hours, and it is a series of cloture motions, which stretches the time out, again, really wasting precious time on the floor of the Senate when we should be governing, answering, responding to the problems of everyday Americans, the challenges of everyday Americans.

Looking at what we have gone through recently, for example, the pensions bill, we passed the pensions bill on November 16, 2005, with a vote of 97 to 2, overwhelming support. I asked the Democrats to appoint conferees on December 15 of last year. I asked them to appoint conferees again, renewing that request on February 1. I have been in continued conversation and discussions with the Democratic leadership. Again: Not yet, postponement. We know the issues pertaining to the pensions bill. We can't respond until we can get to conference. The House is ready with conferees, but we can't go to conference until we appoint conferees. Yet once again, those names are not given.

I have been in discussion with the Democratic leader. I understand we will be able to appoint conferees in the next 24 hours or so. But it is the pattern of postponement, delay, obstruction, and stopping the Nation's business that disturbs me.

The asbestos bill, I said long ago that we would spend this period on asbestos. We were forced by the other side of the aisle to file cloture on the motion to proceed just to get on that bill, a bill that does address victims who are suffering from asbestos-related disease and who are not being compensated fairly. We voted in favor of cloture 98 to 1. Then we had delayed consideration of the bill by 3 days by forcing cloture, and then we had insistence on a day of debate only—again, postponement.

The Alito nomination ended up being successful; the advice and consent was carried out. But once again, there was a week delay beyond which we had worked out a time line before we could bring the Alito nomination to the floor.

Earlier this week and over the last couple of weeks, we have had to deal with the tax reconciliation bill to go to conference. The Democrats forced the Senate to consider the bill three separate times just to get to conference. We had 20 hours of debate the first time, with 17 rollcall votes, and then we had another 20-hour limitation, with 7 more rollcall votes. Then we had a series of votes yesterday morning on motions to instruct before we get to conference. All of that didn't change the bill at all. These are nonbinding motions to instruct—but again, another manifestation of stalling, postponing, delaying.

It is frustrating because whether it is the tax relief bill or the Alito nomination or the asbestos bill or the pensions bill or, now, the PATRIOT Act, it is a pattern that, if we are going to be working together in the Nation's interest, we cannot continue over the course of the year; otherwise, we will not get anything done when we do have challenging problems with health care costs too high, things that we can do on education in terms of math and science, making our country and our students more competitive in the future, addressing issues surrounding funding our military.

So with that, I plead to my colleagues on both sides of the aisle to work together to make progress. Let's be doing what we are supposed to be

doing and that is governing in the Nation's interest.

Mr. President, I ask unanimous consent that the cloture vote on the pending motion to proceed occur at 10:30 a.m. tomorrow with the mandatory quorum waived; provided further that if cloture is invoked, notwithstanding rule XXII, the Senate proceed immediately to the bill; I further ask consent that if a cloture motion is filed on the bill during Thursday's session, then that cloture vote occur at 2:30 p.m. on Tuesday, February 28; provided further that if cloture is invoked on the bill, then at 10 a.m. on Wednesday, March 1, the bill be read a third time and the Senate proceed to a vote on the bill with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENERGY

Mr. DORGAN. Mr. President, I will spend a few minutes talking about energy.

There was a letter to the editor in the Wall Street Journal, I believe, this morning or yesterday morning, responding to an editorial where I had given a response to an editorial. The writer to the Wall Street Journal was taking me to task for saying there is not a ''free market'' in energy or in oil. My point was there is no free market in oil. He said he doesn't know what I have been drinking or where I got these thoughts. He said there is a free market in oil.

Let me describe all of this in the context of President Bush's State of the Union Address in which he suggested that we are ''addicted'' to oil and we need to move toward greater independence with respect to oil, especially coming from off our shores.

First, on the subject of a free market, there is no free market in oil. A substantial portion of oil comes from halfway around the world, under the sand in the Middle East, in Saudi Arabia, Kuwait, Iraq, and Iran. A substantial part of the world supply of oil comes from that region. And those OPEC ministers, having formed a cartel, sit around a room and decide how much they are going to pump and at what price. That is a cartel. Cartels are the antithesis of the free market system. Yet the OPEC countries have this cartel, produce a great amount of oil, and they decide how they are going to manipulate price and supply. That is No. 1.

No. 2, you have the large oil companies, bigger and much stronger because of the blockbuster mergers in recent decades, especially in the last one. These oil companies used to be one company, and now they are a company with several names, such as ExxonMobil. That used to be Exxon, and that used to be Mobil. They decided to fall in love and get married, and now it is ExxonMobil. Last year, ExxonMobil made $36.1 billion—the highest profit ever recorded in corporate America. ExxonMobil.

Then there is Chevron-Texaco. It used to be Chevron, and there was Texaco. They discovered they liked each other and they got hitched, making it Chevron-Texaco.

And then we have ConocoPhillips, which used to be separate companies. Once they decide to marry up and merge, they save all these names.

So there is ExxonMobil, Chevron-Texaco, and ConocoPhillips. Maybe some day they will all merge, and when you put them all together, they will be ExxonMobil ChevronTexaco ConocoPhillips—just one company. The blockbuster mergers mean these companies are bigger, stronger, and have greater capacity to influence the marketplace.

So you have the OPEC ministers in a closed room talking about supply and price and how they affect supply and price and the manner in which they want to affect it. You have the oil companies, larger and stronger, having more muscle to influence the marketplace. And third, you have the futures market. The futures market, rather than simply providing liquidity for training, has become an orgy of speculation. So those three things are what determine the price of oil and the price of gasoline. It has very little to do with the so-called free market. Yet we hear all these people talk about the free market.

Do you think it is the free market that gives us a company such as ExxonMobil, with profits of $36.1 billion last year? That is not a free market. That is the price of oil which is somewhere between $60 and $70 a barrel. That is up from $40 a barrel average price of the year before, at which point this company had the highest profits in their history. So it went from an original price of $40 a barrel to over $60 a barrel, and the company had no additional expenses at all. That price went to that level and it stayed relatively at that level, and it has dramatically boosted the profits of all of these oil companies—Shell, $25.3 billion; B.P., $22.3 billion; $36.1 billion for ExxonMobil.

Listen, all the gain is here with the big oil companies and the OPEC countries. All the gain is here, and all the pain is on the side of the consumers, people trying to heat their home in the winter, people driving to the gas pump trying to figure out how much it is going to take to fill up their tank. They are paying the higher prices, and all that goes into these coffers, higher profits. And that is sent also to the OPEC countries.

The President talks about an addiction to oil. I would use that term. We are hopelessly addicted to oil. I don't suggest that we have an oil anonymous organization where we show up on Wednesday nights and confess that we drove our Humvee 10 blocks to pick up a bagel. What do we confess to? Well, we have a 6,000-pound vehicle and we decided we needed to run an errand to buy a piece of ribbon. That is not what I suggest, nor is it what I expect the President suggest.

Addiction to oil. Let's think about that. We suck 84 million barrels of oil out of this Earth every day. Every single day, 84 million barrels are sucked out of the Earth. One-fourth of it, 21 million barrels of oil, goes to this country, the United States of America. We use fully one-fourth of all the oil that is extracted from this planet every single day. Sixty percent of all that oil we use in this country comes from off our shore, and much of it from troubled parts of the world. If, God forbid, something should happen to the supply of oil from Saudi Arabia tomorrow, we would have a huge problem.

Our economy is, in fact, attached to the ability to get oil from other parts of the world that are very troubled parts of our planet. If terrorists, for some reason, interdicted the supply of oil, shut off the supply of oil tomorrow morning, our economy would be in deep trouble. Obviously, there are national security interests here. Does it make sense from a national security standpoint to have the American economy running on 60-percent foreign oil, much of it coming from troubled parts of the world? The answer to that is no. Of course not. So in addition to national security issues, you have the issue of the unfairness, of huge profits for the major oil companies, huge profits for the OPEC countries, Saudi Arabia, Kuwait and others, and then substantial pain for people, many of whom can't afford it, pain in the form of higher prices.

Energy independence: That is the watchword. Energy independence, they say. What does all this mean? Let me go back for a moment to January 13, 2002. January 13, 2002 is the day the Ambassador for Saudi Arabia showed up at the White House in the Oval Office. Prince Bandar, the Saudi Ambassador, was then told at a meeting in the White House on January 13 that this country was going to attack Iraq, invade the country of Iraq. It is interesting that not until the next day did the President notify the U.S. Secretary of State.

On January 13, at a meeting in the Oval Office—and again, this comes from Bob Woodruff's book ''Bush at War''—the President called in and notified the Saudi Ambassador to the United States that we were going to war with Iraq. The following day, the President notified his own Secretary of State that he had made a decision to

go to war with Iraq. Interesting. It describes something about the relationship this country has with Saudi Arabia and the importance it places on that relationship.

This occurred, by the way, as my colleagues know, following 9/11/2001. Fifteen of the 19 hijackers were Saudi citizens. Of the 19 hijackers who flew the planes that hit this country, 15 of them were Saudi citizens. We had Saudi citizens rounded up on private airplanes leaving this country. Then in January of 2002, the President calls the Saudi Ambassador to the Oval Office and tells him we are going to war with Iraq. The following day, he tells our own U.S. Secretary of State Colin Powell that he has decided to go to war with Iraq. I recite that because it describes a very special relationship this country has had with Saudi Arabia, and perhaps a very unhealthy relationship. Under the Saudis' noses and eyes, I believe, there has existed a network of madrassas, schools and other activities in which terrorist organizations developed and flourished, and we bore the brunt of that on 9/11/2001. As long as they left Saudi Arabia alone, it was going to be all right; They could develop their terrorist cells.

The fact is when we go to the gas pumps in this country and fill our tank and pay the kind of money we are paying for that petroleum, there is a fair amount of evidence, and it is written evidence coming from numerous studies, that we are actually helping to finance terrorism. There are many steps we have to take to deal with that.

The first and most important step, however, is for us to understand this addiction to oil from the Middle East. The addiction to oil from Saudi Arabia and Kuwait and Iraq and elsewhere is a very unhealthy circumstance for our country. It is relatively easy to talk about addiction and fairly simple to talk about the need for energy independence. It is quite another thing to get there. I mentioned a moment ago driving a 6,000-pound car to go get a bagel. By that I meant a Humvee. Understand, I have never driven a Humvee, but I understand they weigh about 6,000 pounds, and I don't mean to demean anybody who would drive a 6,000-pound Humvee. But I do have, as I have indicated before, only broken knowledge of Latin, and when I drive up to a stoplight beside a Humvee and look over and see a Humvee on the street next to me, I think of a Latin phrase I learned in high school, not in formal class, but the phrase was ''totus porcus.'' I look at Humvees, 6,000-pound vehicles, and I understand that no one has been serious in this country about suggesting that we change the way we do things.

Are we suggesting that we get better gas mileage in our automobiles in any significant way? I looked at a vehicle the other day that is an identical vehicle to the same model that was produced 10 years ago. Guess what. It has exactly the same rated gas mileage. In 10 years, we can't add 1 mile per gallon. Whether it is conservation, efficiency, better gas mileage, or any dozens of other issues on the side of using petroleum products, or if it is on the side of producing petroleum products, we don't have a national plan. We don't have a plan that represents this country's crucial interests in actually getting to some kind of independence or some percentage of independence of foreign oil. We need one, and if the President's call in his State of the Union is an honest attempt to get there, I am with him. But it is not so much what we say, it is what we do that will determine our energy future.

I was proud in the last week or two to join my colleagues Senator DOMENICI, Senator BINGAMAN, and Senator TALENT in offering legislation to open the Gulf of Mexico for additional production. We believe there is somewhere around 6 trillion cubic feet of natural gas available for production in lease 181. It was ready for production in 2001 and the President took it off the books because his brother was Governor of Florida and didn't want it produced, so it has not been produced. But the fact is on a bipartisan basis here in the Senate we have a fair number of people on the bill that has been introduced. So let's produce, let's get that natural gas and get it into the pipeline.

The issue of additional production, especially coming from renewable fuels, makes a great deal of sense to me. I talked about lease 181, that is drilling, and that is production from drilling, oil and natural gas. We have a pipeline that needs to get done that we have already supported, from Alaska to the United States, transporting substantial portions of natural gas to the United States, but those who are supposed to be doing that have been dragging their feet on that. We do need fossil fuels to be producing more. But we also in the area of renewable fuels need to understand, we can decide to substitute for traditional fuels a substantial amount of renewable energy if we decided our country could do that.

Wind energy. Wind energy has great potential. Taking energy from the wind and producing electricity from it, perhaps even using electricity in the process of electrolysis to separate hydrogen from water and creating hydrogen fuel to run a hydrogen fuel-celled vehicle. All of that makes great sense. But you only do that as a country if you set goals and decide that is the direction you want to head.

Biofuels, ethanol. I was part of a group that set a new renewable fuel standard, saying we are going to get to 7.5 billion gallons of ethanol by the year 2012, doubling the use of ethanol in our country. That means you go in the farm fields on a renewable basis every year, produce corn, as an example, and produce ethanol fuel from corn that extends America's energy supply and also produces a new market for family farmers. All of these things are doable. Other countries have done them. Brazil is an example of a country that has done remarkable things with the extension of renewable fuels. Our country has not because we have not had a plan. Now we are getting there.

Last year's energy bill was a start. The bill we have introduced on lease 181 is another piece. There is much more to do, but we will not do anything close to move toward something you could call energy independence unless we as a country have a rational plan, a thoughtful plan.

There has been a lot of discussion about who created this energy plan of ours. It goes all the way back to the year 2001 when there were secret meetings and we had people coming to town to participate in these meetings, and virtually all of these countries, I understand, played a role in meetings such as that, although we can't find the names because they claim that the meetings were not public. The Vice President and others convened meetings, developed an energy policy, but it has not been a policy that has done anything other than lead us toward greater dependence on foreign sources of oil.

Slightly over 60 percent of our oil is coming from off our shores. That is scheduled in a very short order to go to nearly 70 percent. It has been an inevitable climb, from 60 to now 70. We are going to have to decide as a country, are we going to change that or aren't we? There is not much more we can do for this country's economic security and national security that is more important than to take this kind of energy plan and to decide to embark on something that will strengthen this country and make us less dependent on unstable parts of the world for the production of our energy and for the transport of our oil.

It is interesting to me that we never see that which goes in our gas tanks. My father ran a gasoline station, among other things. So when I was a kid, on nights and Saturdays and weekends, I was pumping gas. Some people say my occupation hasn't changed very much. But I pumped gas, and people would drive up and I filled their car with gas. I did that when I was a kid for years and years. When you think about this, we never see that product. So it comes from under the sands of Saudi Arabia. The Lord has seen fit to give us this wonderful bounty called the United States of America. There is no other country quite like it. Yet we have this prodigious appetite for energy. We use one-fourth of all the oil that is sucked out of this earth every day, and a substantial part of the oil, for some reason, exists halfway around the world under the sands of a very troubled part of our globe.

So in Saudi Arabia, where there are dramatic deposits of oil—we are not quite sure how large those deposits are because the Saudis won't let anyone verify all that—it is pulled out of that sand. It is cheaper to pull it out of that sand than anywhere else on the face of

the Earth, and then it is put in a pipe, it goes to a refinery, put in another pipe, goes to a dock, put on a ship, comes to this country on a tanker, is offloaded into a refinery, goes on a pipeline, perhaps goes to a truck, gets sent to a gasoline station, pumped through an underground tank and pumped through a hose into your car, and no one has ever seen it. Nobody has ever seen that gallon of gasoline. That is the way it works. But literally in this country our economy and our future are held prisoner by this unbelievable dependence on foreign oil.

It affects everything we do. It affects our foreign policy. We have gone to war over oil. It affects everything. So the question for this President and this Congress, not tomorrow but today, is how do you reach some sort of independence? How do we make our country less dependent on something we desperately need for our future economic opportunity and growth, less dependent on oil from overseas? I know there are as many suggestions on how to write a new energy policy as there are Members of the Senate. But I do not believe, with all due respect, that there is a Republican or Democratic way to write an energy policy or a conservative or liberal way to write an energy policy. I think there is a right way and a wrong way and a smart way and a pretty stupid way. But it seems to me that we need to begin to find the best of what each of our political parties has to offer in terms of an energy policy and find a way to construct, from the best of what both have to offer, something to assure us that our economy will have the energy that it needs for the future.

This is not some academic discussion, as is often the case on the floor of the Senate. There are people who, this winter, do not have enough money to heat their homes because prices are too high. That does not, by the way, have anything to do with supply and demand. You see these profits, the highest profits in history for the oil companies. You don't see gasoline lines. Has anybody seen any gas lines around here, people lining up for hours to get gas? No. There is no shortage. In fact, something came across my desk yesterday—an oil company is shutting down a portion of its refinery because it wants to restrict supply. Why? It wants to keep prices where they are. They like these high prices.

There are a lot of ramifications. There are enormous riches for the big oil companies and enormous pain for the American consumer, and that is the short term. The question in the short term is always: Who is going to stand up for the American consumer? I introduced a bill, along with my colleague, Senator DODD, from Connecticut, a couple of months ago, that would have imposed a windfall profit tax on these oil company profits, only on the profits above $40 a barrel. Incidentally, last year, 2004, represented the highest profits in history at $40 a barrel. We proposed a windfall profits tax at 50 percent on profits over $40 a barrel, with all the proceeds to be sent back to the American consumers as a rebate.

Interestingly enough, I guess it was 65 Senators voted against that because they do not want to take money from the oil industry and provide it as a rebate to consumers. I think you ought to even the score a bit. There is no justification for these profits. These companies have not exhibited additional expenses. These are extraordinary profits, the highest in the history of corporate America, and all the American consumers are feeling the pain. That is the short term. We have tried, in the short term, to address it with the windfall profits tax rebate bill and we have not been successful. But that is not over.

Then in the intermediate to longer term, we have to do more. We need a real plan for energy independence, a real plan, one that addresses alternative fuels and renewable fuels, enhances the recovery of fossil fuels in a way that is protective of our environment. We need to be doing all of that together, reaching a set of goals that our country establishes. You can't do this without leadership.

So my hope is that, both from the White House and also from here, we will begin to see some leadership toward energy independence—I mean some real leadership. Talking about it is one thing. It doesn't mean anything. People have been talking about this forever. It is a waste of breath unless it results in real planning.

I have mentioned before the book McCullough wrote about John Adams. It was a fascinating book and had lingering questions from John Adams as he was traveling around the world representing this new country they were trying to form. He spent time in France and England. He would write back to his wife Abigail. At least as I read the book, it would seem that he would write to Abigail and lament to her in his letters: Where will the leadership come from to form this new country of ours? Where will the leadership emerge to put this new country we want to form together? Then in the next letter he would write: Well, then, there is really only us—there's me, there's George Washington, there's Ben Franklin, there's Thomas Jefferson, there's Madison, there's Mason—and of course in the rearview mirror of history we know the ''only us'' now represents some of the greatest human talent ever assembled. But every generation of Americans asks the identical question: Where will the leadership come from? Where will the leadership emerge, real leadership, to steer this country in the right direction?

With respect to energy policy which relates to both our economic security and our national security, time is wasting, and there is not a more important subject for us to address, beginning now. The question remains: Where will the leadership come from? That question is addressed to both the White House and the Congress, asking for, finally, what the best of both political parties ought to have to offer this country.

AMERICAN ASSOCIATION ON MENTAL RETARDATION AWARD WINNERS

Mr. DURBIN. Mr. President, I am pleased today to join the Illinois chapter of the American Association on Mental Retardation, AAMR, in recognizing the recipients of the 2006 Direct Service Professional Award. These individuals are being honored for their outstanding efforts to enrich the lives of people with developmental disabilities in Illinois.

These recipients have displayed a strong sense of humanity and professionalism in their work with persons with disabilities. Their efforts have inspired the lives of those for whom they care, and they are an inspiration to me as well. They have set a fine example of community service for all Americans to follow.

These honorees spend more than 50 percent of their time at work in direct, personal involvement with their clients. They are not primarily managers or supervisors. They are direct service workers at the forefront of America's effort to care for people with special needs. They do their work every day with little public recognition, providing much needed care and assistance that is unknown except to those with whom they work.

It is my honor and privilege to recognize the Illinois recipients of AAMR's 2006 Direct Service Professional Award: Cheryl Case, Lisa Cutter, Jane Flores, Cindy Block, Patricia Bzdyl, Don Collins, Judy Hicks, Holly Spence, Della Reese, Sarah McRae, and Kathy Slimmer.

I know my fellow Senators will join me in congratulating the winners of the 2006 Direct Service Professional Award. I applaud their dedication and thank them for their service.

ARMY SPECIALIST PATRICK HERRIED

Mr. JOHNSON. Mr. President, in February 6, 2006, one of South Dakota's sons made the ultimate sacrifice while serving in Iraq. Army SP Patrick Herried died when an improvised explosive device detonated under the armored military vehicle he was driving. He was a member of the 4th Squadron, 14th Calvary Regiment, 172nd Stryker Brigade Combat Team based in Fort Wainwright, AK.

Specialist Herried was a 1994 graduate of Roosevelt High School in Sioux Falls and was fondly remembered by his classmates and teachers. Like many South Dakotans, he was passionate about sports and the outdoors. He was a member of the Roosevelt High School football team and enjoyed skateboarding and mountain biking.

Specialist Herried joined the Army in the hopes that it would lead to a better career and even college. His mother, Rita, agreed that the Army had a positive impact on her son. ''He was just a good kid,'' she said. ''Really quiet, but very directed since he's been in the service. He was a good son.''

Patrick's family and friends are in my thoughts and prayers during this trying time. Coming to terms with the

loss of any soldier who gives their life in defense of freedom is difficult. While we are awed by Patrick's selfless sacrifice, we are reminded that his life ended much too soon. It is my sincere hope that Patrick's family may take some small measure of comfort knowing our Nation is eternally grateful for his dedicated service to our country.

CORPORAL JESSE ZAMORA

Mr. BINGAMAN. Mr. President, I rise today to pay tribute to the life of CPL Jesse Zamora. I regret to inform my colleagues that Corporal Zamora was killed in Beiji, Iraq on February 3, 2006.

Those close to Corporal Zamora recognized an indomitable love of country and a passionate desire to serve his Nation in the military at an early age. Friends and family recall that as a young man, Corporal Zamora would often drive into the desert near Las Cruces in his pickup to practice his marksmanship. This simple custom is indicative of his discipline and certainly contributed to his great skill as a soldier. In 2002, shortly after graduating from high school, Corporal Zamora enlisted in the Army, fully knowing that his country would soon be going to war abroad. This brave decision illustrates the selflessness that endeared Corporal Zamora in the hearts of his family members, his friends, and his brothers in arms. It also demonstrates his passionate, disciplined approach to service and the selfless demeanor that is at the core of what the American Army prides its servicemembers on honor, duty, humility, and loyalty.

His mother Paola, stepfather Sergio, sister Christy, are all in our thoughts. His brother Tyrel is another brave member of the U.S. Army, and I hope that we can soon guarantee him a swift and safe journey home.

Corporal Zamora was assigned as an infantryman to the 101st Airborne Division. We can never fully express our gratitude for our veterans' service; I ask that we stop now to thank Corporal Zamora and acknowledge the sacrifice of his family for their Nation.

POPULARITY OF ''GROUNDHOG DAY''

Mr. GRASSLEY. Mr. President, yesterday and a few weeks ago, I invoked the movie ''Groundhog Day'' starring Bill Murray to provide a perspective on consideration of our tax reconciliation package. For the edification of my esteemed colleagues and other interested parties, I ask unanimous consent that an article originally published in the February 14, 2005, issue of ''National Review'' titled, ''A Movie for All Time,'' be printed in the RECORD. This article provides some information on the film and its enduring popularity.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the National Review, Feb. 14, 2005]

A MOVIE FOR ALL TIME

(By Jonah Goldberg)

Here's a line, you'll either recognize, or you won't: ''This is one time where television really fails to capture the true excitement of a large squirrel predicting the weather.'' If you don't recognize this little gem, you've either never seen Groundhog Day or you're not a fan of what is, in my opinion, one of the best films of the last 40 years. As the day of the groundhog again approaches, it seems only fitting to celebrate what will almost undoubtedly join It's a Wonderful Life in the pantheon of America's most uplifting, morally serious, enjoyable, and timeless movies.

When I set out to write this article, I thought it'd be fun to do a quirky homage to an offbeat flick, one I think is brilliant as both comedy and moral philosophy. But while doing what I intended to be cursory research—how much reporting do you need for a review of a twelve-year-old movie that plays constantly on cable?—I discovered that I wasn't alone in my interest. In the years since its release the film has been taken up by Jews, Catholics, Evangelicals, Hindus, Buddhists, Wiccans, and followers of the oppressed Chinese Falun Gong movement. Meanwhile, the Internet brims with weighty philosophical treatises on the deep Platonist, Aristotelian, and existentialist themes providing the skin and bones beneath the film's clown makeup. On National Review Online's group blog, The Corner, I asked readers to send in their views on the film. Over 200 e-mails later I had learned that countless professors use it to teach ethics and a host of philosophical approaches. Several pastors sent me excerpts from sermons in which Groundhog Day was the central metaphor. And dozens of committed Christians of all denominations related that it was one of their most cherished movies.

When the Museum of Modern Art in New York debuted a film series on ''The Hidden God: Film and Faith'' two years ago, it opened with Groundhog Day. The rest of the films were drawn from the ranks of turgid and bleak intellectual cinema, including standards from Ingmar Bergman and Roberto Rossellini. According to the New York Times, curators of the series were stunned to discover that so many of the 35 leading literary and religious scholars who had been polled to pick the series entries had chosen Groundhog Day that a spat had broken out among the scholars over who would get to write about the film for the catalogue. In a wonderful essay for the Christian magazine Touchstone, theology professor Michael P. Foley wrote that Groundhog Day is ''a stunning allegory of moral, intellectual, and even religious excellence in the face of postmodern decay, a sort of Christian-Aristotelian Pilgrim's Progress for those lost in the contemporary cosmos.'' Charles Murray, author of Human Accomplishment, has cited Groundhog Day more than once as one of the few cultural achievements of recent times that will be remembered centuries from now. He was quoted in The New Yorker declaring, ''It is a brilliant moral fable offering an Aristotelian view of the world.''

I know what you're thinking: We're talking about the movie in which Bill Murray tells a big rat sitting on his lap, ''Don't drive angry,'' right? Yep, that's the one. You might like to know that the rodent in question is actually Jesus—at least that's what film historian Michael Bronski told the Times. ''The groundhog is clearly the resurrected Christ, the ever-hopeful renewal of life at springtime, at a time of pagan-Christian holidays. And when I say that the groundhog is Jesus, I say that with great respect.''

That may be going overboard, but something important is going on here. What is it about this ostensibly farcical film about a wisecracking weatherman that speaks to so many on such a deep spiritual level?

THOROUGHLY POSTMODERN PHIL

A recap is in order. Bill Murray, the movie's indispensible and perfect lead, plays Phil Connors, a Pittsburgh weatherman with delusions of grandeur (he unselfconsciously refers to himself as ''the talent''). Accompanied by his producer and love interest, Rita (played by Andie MacDowell), and a cameraman (Chris Elliott), Connors goes on assignment to cover the Groundhog Day festival in Punxsutawney, Pa., at which ''Punxsutawney Phil''—a real groundhog—comes out of his hole to reveal how much longer winter will last. Connors believes he's too good for the assignment—and for Punxsutawney, Pittsburgh, and everything in between. He is a thoroughly postmodern man: arrogant, world-weary, and contemptuous without cause.

Rita tells Phil that people love the groundhog story, to which he responds, ''People like blood sausage, too, people are morons.'' Later, at the Groundhog Festival, she tells him: ''You're missing all the fun. These people are great! Some of them have been partying all night long. They sing songs 'til they get too cold and then they go sit by the fire and get warm and then they come back and sing some more.'' Phil replies, ''Yeah, they're hicks, Rita.''

Phil does his reporting schtick when the groundhog emerges and plans to head home as quickly as possible. Unfortunately, a blizzard stops him at the outskirts of town. A state trooper explains that the highway's closed: ''Don't you watch the weather reports?'' the cop asks. Connors replies (blasphemously, according to some), ''I make the weather!'' Moving on, the cop explain's he can either turn around to Punxsutawney or freeze to death. ''Which is it?'' he asks. Connors answers, ''I'm thinking, I'm thinking.'' Reluctantly returning to Punxsutawney, Connors spends another night in a sweet little bed and breakfast run by the sort of un-ironic, un-hip, decent folks he considers hicks.

The next morning, the clock radio in his room goes off and he hears the same radio show he'd heard the day before, complete with a broadcast of ''I Got You Babe'' and the declaration, ''It's Groundhog Day!'' At first, Connors believes it's an amateurish gaffe by a second-rate radio station. But slowly he discovers it's the same day all over again. ''What if there is no tomorrow?'' he asks. ''There wasn't one today!''

And this is the plot device for the whole film, which has seeped into the larger culture. Indeed, ''Groundhog Day'' has become shorthand for (translating nicely) ''same stuff, different day.'' Troops in Iraq regularly use it as a rough synonym for ''snafu,'' which (also translated nicely) means ''situation normal: all fouled-up.'' Connors spends an unknown number of days repeating the exact same day over and over again. Everyone else experiences that day for the ''first'' time, while Connors experiences it with Sisyphean repetition. Estimates vary on how many actual Groundhog Days Connors endures. We see him relive 34 of them. But many more are implied. According to Harold Ramis, the co-writer and director, the original script called for him to endure 10,000 years in Punxsutawney, but it was probably closer to ten.

But this is a small mystery. A far more important one is why the day repeats itself and why it stops repeating at the end. Because the viewer is left to draw his own conclusions, we have what many believe is the best

cinematic moral allegory popular culture has produced in decades—perhaps ever.

Interpretations of this central mystery vary. But central to all is a morally complicated and powerful story arc to the main character. When Phil Connors arrives in Punxsutawney, he's a perfect representative of the Seinfeld generation: been-there-done-that. When he first realizes he's not crazy and that he can, in effect, live forever without consequences—if there's no tomorrow, how can you be punished?—he indulges his adolescent self. He shoves cigarettes and pastries into his face with no fear of lovehandles or lung cancer. ''I am not going to play by their rules any longer,'' he declares as he goes for a drunk-driving spree. He uses his ability to glean intelligence about the locals to bed women with lies. When that no longer gratifies, he steals money and gets kinky, dressing up and play-acting. When Andie MacDowell sees him like this she quotes a poem by Sir Walter Scott: ''The wretch, concentrated all in self/Living, shall forfeit fair renown/And, doubly dying, shall go down/To the vile dust, from whence he sprung/Unwept, unhonored, and unsung.''

Connors cackles at her earnestness. ''You don't like poetry?'' She asks. ''I love poetry,'' he replies, ''I just thought that was Willard Scott.''

Still, Connors schemes to bed Rita with the same techniques he used on other women, and fails, time and again. When he realizes that his failures stem not from a lack of information about Rita's desires but rather from his own basic hollowness, he grows suicidal. Or, some argue, he grows suicidal after learning that all of the material and sexual gratification in the world is not spiritually sustaining. Either way, he blames the groundhog and kills it in a murder-suicide pact—if you can call killing the varmint murder. Discovering, after countless more suicide attempts, that he cannot even die without waking up the next day he begins to believe he is ''a god.'' When Rita scoffs at this—noting that she had twelve years of Catholic school (the only mention of religion in the film)—he replies that he didn't say he was ''the God'' but merely ''a god.'' Then again, he remarks, maybe God really isn't all-powerful, maybe he's just been around so long he knows everything that's going to happen. This, according to some, is a reference to the doctrine of God's ''middle knowledge,'' first put forward by the 16th-century Jesuit theologian Luis de Molina, who argued that human free will is possible because God's omniscience includes His knowledge of every possible outcome of every possible decision.

THE METAMORPHOSIS

The point is that Connors slowly realizes that what makes life worth living is not what you get from it, but what you put into it. He takes up the piano. He reads poetry—no longer to impress Rita, but for its own sake. He helps the locals in matters great and small, including catching a boy who falls from a tree every day. ''You never thank me!'' he yells at the fleeing brat. He also discovers that there are some things he cannot change, that he cannot be God. The homeless man whom Connors scorns at the beginning of the film becomes an obsession of his at the end because he dies every Groundhog Day. Calling him ''pop'' and ''dad,'' Connors tries to save him but never can.

By the end of the film, Connors is no longer obsessed with bedding Rita. He's in love with her, without reservation and without hope of his affection being requited. Only in the end, when he completely gives up hope, does he in fact ''get'' the woman he loves. And with that, with her love, he finally wakes on February 3, the great wheel of life no longer stuck on Groundhog Day. As NR's own Rick Brookhiser explains it, ''The curse is lifted when Bill Murray blesses the day he has just lived. And his reward is that the day is taken from him. Loving life includes loving the fact that it goes.''

Personally, I always saw Nietzsche's doctrine of the eternal return of the same in this story. That was Nietzsche's idea—metaphorical or literal—to imagine life as an endless repetition of the same events over and over. How would this shape your actions? What would you choose to live out for all eternity? Others see Camus, who writes about how we should live once we realize the absurdity of life. But existentialism doesn't explain the film's broader appeal. It is the religious resonance—if not necessarily explicit religious themes—that draws many to it. There's much to the view of Punxsutawney as purgatory: Connors goes to his own version of hell, but since he's not evil it turns out to be purgatory, from which he is released by shedding his selfishness and committing to acts of love. Meanwhile, Hindus and Buddhists see versions of reincarnation here, and Jews find great significance in the fact that Connors is saved only after he performs mitzvahs (good deeds) and is returned to earth, not heaven, to perform more.

The burning question: Was all this intentional? Yes and no. Ultimately, the story is one of redemption, so it should surprise no one that it speaks to those in search of the same. But there is also a secular, even conservative, point to be made here. Connors's metamorphosis contradicts almost everything postmodernity teaches. He doesn't find paradise or liberation by becoming more ''authentic,'' by acting on his whims and urges and listening to his inner voices. That behavior is soul-killing. He does exactly the opposite: He learns to appreciate the crowd, the community, even the bourgeois hicks and their values. He determines to make himself better by reading poetry and the classics and by learning to sculpt ice and make music, and most of all by shedding his ironic detachment from the world.

Harold Ramis and Danny Rubin, the writer of the original story, are not philosophers. Ramis was born Jewish and is now a lackadaisical Buddhist. He wears meditation beads on his wrist, he told the New York Times, ''because I'm on a Buddhist diet. They're supposed to remind me not to eat, but actually just get in the way when I'm cutting my steak.'' Rubin's original script was apparently much more complex and philosophical—it opened in the middle of Connors's sentence to purgatory and ended with the revelation that Rita was caught in a cycle of her own. Murray wanted the film to be more philosophical (indeed, the film is surely the best sign of his reincarnation as a great actor), but Ramis constantly insisted that the film be funny first and philosophical second.

And this is the film's true triumph. It is a very, very funny movie, in which all of the themes are invisible to people who just want to have a good time. There's no violence, no strong language, and the sexual content is about as tame as it gets. (Some e-mailers complained that Connors is only liberated when he has sex with Rita. Not true: They merely fall asleep together.) If this were a French film dealing with the same themes, it would be in black and white, the sex would be constant and depraved, and it would end in cold death. My only criticism is that Andie MacDowell isn't nearly charming enough to warrant all the fuss (she says a prayer for world peace every time she orders a drink!). And yet for all the opportunities the film presents for self-importance and sentimentality, it almost never falls for either. The best example: When the two lovebirds emerge from the B&B to embrace a happy new life together in what Connors considers a paradisiacal Punxsutawney, Connors declares, ''Let's live here!'' They kiss, the music builds, and then in the film's last line he adds: ''We'll rent to start.''

MASTER SERGEANT WOODROW WILSON KEEBLE

Mr. JOHNSON. Mr. President, few Americans will recognize MSG Woodrow Wilson Keeble's name, but he was an American hero who served in two wars and who deserves our Nation's most prestigious recognition.

I first became aware of Master Sergeant Keeble's bravery in 2002 after being contacted by members of the Sisseton-Wahpeton Sioux Tribe who were requesting that his Distinguished Service Cross be upgraded to the Congressional Medal of Honor. The Medal of Honor is our Nation's highest military honor, and while it is awarded on behalf of Congress, the Department of Defense determines the qualifications and eligibility for the decoration.

Master Sergeant Keeble, a member of the Sisseton-Wahpeton Sioux Tribe, was an Army veteran of both World War II and the Korean War. For his service, he was awarded the Purple Heart, the Bronze Star, the Silver Star, and the Distinguished Service Cross.

The last decoration was awarded for his actions near Kumsong, North Korea in October 1951. After many days of fighting in the bitter cold, and though he was wounded, Master Sergeant Keeble single handedly took out three enemy machinegun emplacements.

The first hand accounts of his actions that day read like something out of an old Hollywood movie. What he did was real, and his bravery in the face of enemy fire was so remarkable that the men in his company twice submitted recommendations that he receive the Congressional Medal of Honor. In both cases, the recommendation was lost.

Like so many veterans, Master Sergeant Keeble returned home after the war a humble man, not interested in pursuing medals or personal honors. He died in 1982, and without the dedicated effort of his family and fellow veterans, most of us would have never had the opportunity to learn about Master Sergeant Keeble. Today, there is an ongoing effort to document his actions through the eyewitness testimony of those veterans who served with him. This is a valuable effort and will help preserve an important part of our Nation's history.

After first hearing in 2002 of his heroic actions, I contacted the Secretary of the Army to request a review of Master Sergeant Keeble's case. Based on an affidavit from a member of the company that the original recommendations for the Medal of Honor had been lost, I asked the Secretary to waive the normal 3-year statute of limitations requirement for consideration of the Medal of Honor.

Since that time, I have been in close contact with the Army. The recommendation to posthumously award

the Medal of Honor to Master Sergeant Keeble has been reviewed by an Army Decorations Board, a Senior Army Decorations Board, and now awaits final action by the Secretary of the Army. At this point, I do not know if the Secretary's decision will be positive or negative, but I remain in contact with his office almost every month as I have for the past 4 years.

While all of us who care about this case are frustrated by the amount of time this has taken, the thorough review process is an indication of the importance of the Medal of Honor and the seriousness of this decision.

As more people learn about Master Sergeant Keeble's story, more people are joining in the effort to pay tribute to his service. While I do not know what the Army's ultimate decision will be in this case, I can think of no one more deserving of this honor than Master Sergeant Keeble.

TRIBUTE TO DAVID EVANS

Mr. LUGAR. Mr. President, I today pay tribute to David Lee Evans, who had been a member of the staff of the Committee on Foreign Relations. He was a much loved Senate employee who was universally respected for his professionalism, patience, and generosity. Dave passed away last week at age 65.

Dave was born on October 23, 1940, in Baltimore, MD. He graduated from Kenwood High School, and attended Howard Community College. Dave served the Government as a journeyman printer and as a member of the Foreign Relations Committee staff for nearly 23 years. In addition to his service as a printer with the Government Printing Office, he had been Chief Clerk and Assistant Chief Clerk to the committee during the 1970's. Dave ably served under Foreign Relations Committee Chairmen Fulbright, Sparkman, Church, Helms, BIDEN and myself.

Committee members and staff relied heavily on Dave to shepherd our many publications through all aspects of the printing process. As a returning chairman in 2003, I brought in a new majority staff, many of whom were working for a Senate committee for the first time. Dave was indispensable in teaching these staff members committee printing procedures and patiently answering their many questions. Dave's skills, technical ability and good humor made it possible to meet our many deadlines.

During the last 6 years that Dave served the committee, we printed more than 400 documents, including executive and legislative reports, hearings, and other materials. Without Dave's tireless efforts and hard work, the committee would not have been able to produce such a huge volume of material. Dave took great pride in his work and ensured that the material he produced met his and the committee's high standards. Every publication Dave printed reflected favorably on the committee, the Senate, and the U.S. Government as a whole.

In addition to his extensive public service, Dave will be remembered as a loyal friend and loving husband and father. He is survived by his wife Angela, who is currently the Executive Clerk of the Committee on Foreign Relations; four children, David T. Evans, Christopher Evans, Kathleen Canby, and Susan Hennegan; a stepson, Jeffrey Morris; six grandchildren; and a brother.

All who knew Dave will miss his kindness and grace. The thoughts of the entire Foreign Relations Committee are with his family as they remember and celebrate the life of an exemplary man.

Mr. BIDEN. Mr. President, I associate myself with the remarks that our chairman, Senator LUGAR, has just made regarding our fine printer David L. Evans, who died last week at the age of 65 after a courageous battle with cancer.

Dave did two tours as a GPO printer assigned to the Committee on Foreign Relations, first in the 1970s, and then again from 1999 until about a year ago. For a time in the late 1970s, he also served directly on the staff of the committee as its deputy clerk and then its chief clerk. The committee, and the country, are indebted to him for his service for performing some of the numerous jobs that are essential to the operation of this institution, but which are largely unrecognized by the public.

Dave was a big and wonderfully gentle man. He reveled in the opportunity to serve his country, even though it meant working long days, and sometimes well into the night, to ensure that the committee's hearings and reports were printed promptly and properly. Why he put up with us I don't know, but it was an honor to have him on our staff, and to know that the published output of our committee had been subject to his careful and professional scrutiny. He was unfailingly courteous and pleasant to his co-workers, and never complained about his heavy workload.

Like so many others in this country afflicted with cancer, Dave was taken from us too soon. We will miss him greatly. Our thoughts and prayers are with all his family and especially his wife Angie Evans, who shared Dave's work ethic and continues to bless us with her service to the committee.

ADDITIONAL STATEMENTS

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

• Mr. SMITH. Mr. President, I today speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On May 17, 2003, Sakia Gunn was fatally stabbed during a confrontation about her being a lesbian. Gunn and four other girls were waiting for a bus in downtown Newark, NJ, when Richard McCullough and another man drove up and asked them to go to a party. When the girls responded that they were lesbians, the two men began spewing homophobic insults and McCullough proceeded to stab her.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.•

ATLANTA GAS LIGHT

• Mr. CHAMBLISS. Mr. President, I rise today to congratulate Atlanta Gas Light on its 150th anniversary. Atlanta Gas Light was incorporated on February 16, 1856, and first brought lighting to the streets of Atlanta on Christmas Day, 1855, enabling accelerated growth and the safe transportation of individuals and supplies necessary for the expansion of Atlanta and its surrounding communities.

At the end of the Civil War, Atlanta Gas Light quickly rebuilt its gasworks to facilitate the rebuilding of Atlanta and contributed to the rise of that great city to a major commercial center in the Southeast. In the 1920s, it invested in the State of Georgia's future by creating the infrastructure necessary to allow natural gas to flow under the city streets and into homes, ending the need to manufacture gas and expanding the use of gas throughout the Southeast region. In the early 20th century, it began expanding its services to cities and towns throughout the State of Georgia.

Atlanta Gas Light has faithfully served the State of Georgia and its citizens for each of its 150 years, delivering natural gas to customers throughout the State safely and reliably. This great company and its top-notch employees deserve special recognition. They have contributed millions of dollars and hours to improve the communities in which they work and live.

Atlanta Gas Light and its Georgia parent, AGL Resources, continue to provide exemplary service to their customers and remain a vital part of the economic development of the State of Georgia. I am pleased to take this opportunity to commemorate the contributions and services rendered by Atlanta Gas Light in its 150 years of operation and look forward to its continued service for the next 150 years.•

CONGRATULATING MS. SARA J. KIEFFNER

• Mr. BUNNING. Mr. President, today I rise to congratulate Ms. Sara J.

Kieffner for being selected as one of the Cincinnati Enquirer newspaper's Women of the Year.

The Enquirer has done well to bestow this honor on Ms. Kieffner. Among her many causes, she has done much for the St. Elizabeth Medical Center Foundation. She has also devoted herself to promoting breast health awareness and to raising funds for the Fischer Homes Breast Center. If that weren't enough, she is also active with the Redwood Rehabilitation Center, the American Cancer Society's Northern Kentucky chapter, United Ministries, and her church, Gloria Dei Lutheran.

Since The Enquirer's Women of the Year program was started in 1968, over 350 women in Greater Cincinnati and northern Kentucky have been singled out for their efforts to improve the community for everyone.

Ms. Kieffner has certainly deserved this citation. As a Senator and a member of her community, I am proud of her dedication. Her accomplishments serve as an example to all citizens of the Commonwealth.●

TRIBUTE TO WILLIAM A. COOPER

● Mr. COLEMAN. Mr. President, I rise to extend my congratulations to Mr. William A. Cooper for long standing service as CEO at TCF Financial Corporation, a financial holding company based in Minnesota.

Bill Cooper came to TCF Financial in 1985 with an impressive financial leadership record which included serving as a senior auditor for Touche, Ross and company, a Detroit firm, and as President of Huntington Bank of Ohio.

But based on my personal relationship with Bill, I would say his high school graduating class might have voted him ''least likely to become a banker.'' The banker's stereotype is reserved, cautious, and circumspect. Bill Cooper is bold, innovative, and refreshingly outspoken. Like his hero Ronald Reagan, there is never a bit of doubt as to where Bill Cooper stands.

During his tenure as CEO, Bill Cooper directed an impressive expansion of TCF Financial in Minnesota and elsewhere through his innovative leadership. From 1985 until his retirement in January, he helped to transform TCF Financial from a small banking enterprise into a thriving operation offering industry leading consumer services.

Bill Cooper is a complete citizen. He not only led a thriving business that provided thousands of jobs and financial services to a big proportion of our Minnesota population, Bill used his voice, his philanthropy, and his influence to improve as many sectors of our State as he could get his hands on.

His work on education not only shaped Minnesota public policy, his personal involvement changed the lives of hundreds of disadvantaged students forever. He has always had strong opinions and had the integrity to walk his talk.

Although Mr. Cooper has retired as CEO of TCF, he has not completely given himself up to the ski slopes or the golf courses as he continues to remain active in the financial world and in his community.

Minnesota has been fortunate to have a business leader like Mr. Cooper who not only has enriched the economy of Minnesota and elsewhere but has also used his good name, time, and money for the good of the community. Minnesota celebrates its lakes and farms and excellent community assets. One of the secrets of our success is community leaders like Bill Cooper who shoulder the burdens of leadership.

I congratulate Bill Cooper, the staff of TCF, and his family on his great career and leadership in the community.●

CELEBRATING THE 2006 BILL TALLMAN MEMORIAL WOMEN IN SCIENCE CONFERENCE

● Mr. JOHNSON. Mr. President, it is with great pride that I rise to recognize the Bill Tallman Memorial Women in Science Conference, which is taking place in five communities across South Dakota from March 6th through April 28th. Since 2002, the Women in Science Conference has helped to increase interest in science and technological careers among young women in my State. This year's conference is named in honor of the event's distinguished founder, Bill Tallman, who unexpectedly passed away last October while helping with recovery efforts for victims of the devastating hurricanes that hit the gulf coast region.

The cover of a recent Time magazine features a rather amusing photo of a child wearing a lab coat and oversized safety goggles, accompanied by the question, ''Is America Flunking Science?'' Though the image is meant to provoke a laugh, its associated question is anything but humorous. By a number of measures, our country is losing the competitive edge in scientific and technological fields that has for decades been a key driver of our economy. At a national level, one of the factors that undoubtedly contributes to this unfortunate trend is a failure to adequately engage young women in scientific pursuits. It is discouraging to think of how many important discoveries were never made because of our failure to cultivate young female researchers.

In my view, the Women in Science Conference in South Dakota is a shining example of what we as a nation need more of to retain and enhance our superiority in science and technology. The conference provides young women in South Dakota with first-hand exposure to women who are leading important scientific work. These distinguished individuals share the rewards and challenges of their work in vivid, concrete terms, and serve as role models for young women who may not have previously considered a career in science.

The Women in Science Conference is a product of a partnership between several forward-thinking entities, including the National Weather Service, and several nonprofit and private-sector sponsors. Without their contributions, this valuable event would not be possible.

It is a fitting tribute to Bill Tallman that this year's event should be named in his honor. Bill not only recognized the need for an important event like this, he actually made it happen. I know it was one of his proudest achievements, and I congratulate everyone who participates in the Women in Science Conference for helping to carry on his vision. Bill began his career by engaging young minds as a high school math teacher, and then served his country during a 20-year career as a meteorologist with the U.S. Air Force. Next he joined the National Weather Service, and was eventually asked to lead its Aberdeen, SD, office. At a time of national tragedy, few were surprised at Bill's willingness to serve again by leaving home to help those who had suffered through the devastating hurricanes that hit the gulf coast in 2005.

Bill Tallman's presence will be sorely missed by all the people whose lives he touched. It is my distinct pleasure to honor his life and legacy by recognizing the Bill Tallman Memorial Women in Science Conference today in the Senate.●

MRS. PRANKE'S SIXTH GRADE

● Mr. CONRAD. Mr. President, it is with great pride that I rise today to recognize a special group of students. It is not often enough that we have the opportunity to acknowledge heartwarming acts of kindness, but the actions of Mrs. Pranke's sixth grade class in Sheyenne, ND, have touched my hearts and the heart of their neighbors and friends.

Throughout their years together, this special group of students has worked on more than one occasion to serve their community. As third graders, they collected box tops to purchase new games for schoolmates. When they were in the fifth grade, they initiated a fundraiser and donated the proceeds to benefit the Ronald McDonald House in Fargo, ND.

As one final project, Mrs. Pranke's sixth graders decided to treat themselves to a class trip to celebrate their years together before moving on to junior high school.

The students began holding fundraisers for their trip. Shortly after all the funds had been raised, they learned that the father of one of their classmates had fallen critically ill. The students quickly realized that they were faced with unique circumstances. After learning of their classmate's situation and the medical costs the family would bear, the children chose to donate the funds to their classmate's family and forgo their class trip.

By choosing to help with their hard-earned money rather than keep it for themselves, these extraordinary students proved that their hearts are deep and their love for one another is real.

Again, I commend Mrs. Pranke's exceptional group of sixth graders. Their

selfless act has reaffirmed that values and kindness have not been lost in a world that so often focuses on the negative. I wish them all the best as they finish their final year together and continued success as they begin a new chapter of their education next year.●

MESSAGE FROM THE HOUSE

At 1:40 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 1989. An act to designate the facility of the United States Postal Service located at 57 Rolfe Square in Cranston, Rhode Island, shall be known and designated as the ''Holly A. Charette Post Office''.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4152. An act to designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office''.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 322. Concurrent resolution expressing the appreciation of Congress for the contributions of the United Service Organizations, Incorporated (the USO), to the morale and welfare of the members of the Armed Forces and their families.

The message also announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 2275. An act to temporarily increase the borrowing authority of the Federal Emergency Management Agency for carrying out the national flood insurance program.

The message further announced that pursuant to section 11142 of SAFETEA–LU (Public Law 109–59), Mr. Rangel, the Ranking Minority Member of the Committee on Ways and Means, hereby appoints to the National Surface Transportation Infrastructure Financing Commission the following individuals: Mr. Elliot ''Lee'' Sander (Director of the Rudin Center for Transportation Policy Management at New York University, and Senior Vice President and Director of Strategic Development at DMJM Harris) of New York City, York and Mr. Craig Lentzsch (CEO of Coach USA and KBUS Holdings) of Dallas, Texas.

At 6:29 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4745. An act making supplemental appropriations for fiscal year 2006 for the Small Business Administration's disaster loans program, and for other purposes.

MEASURES REFERRED

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 322. Concurrent resolution expressing the Sense of Congress regarding the contribution of the USO to the morale and welfare of our servicemen and women of our armed forces and their families; to the Committee on Armed Services.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4152. An act to designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office''.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5762. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Standards of Performance for Stationary Combustion Turbines'' ((RIN2060–AM79) (FRL No. 8033–4)) received on February 14, 2006; to the Committee on Environment and Public Works.

EC–5763. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Oil Pollution Prevention; Non-Transportation Related Onshore Facilities'' (FRL No. 8033–9) received on February 14, 2006; to the Committee on Environment and Public Works.

EC–5764. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District'' (FRL No. 8030–7) received on February 14, 2006; to the Committee on Environment and Public Works.

EC–5765. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units'' ((RIN2060–AM80) (FRL No. 8033–3)) received on February 14, 2006; to the Committee on Environment and Public Works.

EC–5766. A communication from the Chairman and President (Acting), Export-Import Bank of the United States, transmitting, a report of draft legislation relative to providing a five-year reauthorization of the Export-Import Bank of the United States; to the Committee on Banking, Housing, and Urban Affairs.

EC–5767. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the Department of Veterans Affairs' report on its competitive sourcing efforts for Fiscal Year 2005; to the Committee on Veterans' Affairs.

EC–5768. A communication from the Attorney, Office of Assistant General Counsel for Legislation and Regulatory Law, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Chronic Beryllium Disease Prevention Program; Worker Safety and Health Program; to the Committee on Energy and Natural Resources.

EC–5769. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's Annual Report of the Administration of the Government in the Sunshine Act for Calendar Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5770. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Add Kazakhstan, Romania, Russia, Turkey, and Ukraine to List of Regions in Which Highly Pathogenic Avian Influenza Subtype H5N1 is Considered to Exist'' (APHIS–2006–0010) received on February 14, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5771. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Mediterranean Fruit Fly; Add Portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, to the List of Quarantined Areas'' (APHIS–2005–0116) received on February 14, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

PETITIONS AND MEMORIALS

The following petition or memorial was laid before the Senate and was referred or ordered to lie on the table as indicated:

POM–263. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to increasing efforts to protect our borders; to the Committee on Homeland Security and Governmental Affairs.

HOUSE RESOLUTION NO. 149

Whereas, The current war on terrorism began on September 11, 2001, when terrorists unleashed an air assault on America's military and financial power centers, hijacking commercial jets and crashing them into the World Trade Center in New York, and the Pentagon in Washington, D.C. Thousands of innocent people were murdered, and the nation suffered billions of dollars in damages from this terrorist attack; and

Whereas, In response to these attacks, in order to better coordinate security and emergency response efforts, the federal government created a federal Homeland Security Department and increased funding for antiterrorism efforts throughout the nation. Border security is an essential component of creating a safe and secure homeland and the federal Homeland Security Department is responsible for protecting our borders. As a border state that includes some of the busiest points of entry in the country, Michigan is acutely aware of the importance of this issue; and

Whereas, In order to increase our safety and security, Congress should pass legislation that provides increased manpower and more sophisticated technology at the national borders. United States border security should be able to apprehend illegal immigrants and potential terrorists before they enter the country and cause mayhem; now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the

United States to increase efforts to protect our borders; and be it further

Resolved, That copies of this resolution be transmitted to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Michigan congressional delegation.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. INHOFE for the Committee on Environment and Public Works.

*Terrence L. Bracy, of Virginia, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term expiring October 6, 2010.

*Dennis Bottorff, of Tennessee, to be a Member of the Board of Directors of the Tennessee Valley Authority for a term expiring May 18, 2011.

*Robert M. Duncan, of Kentucky, to be a Member of the Board of Directors of the Tennessee Valley Authority for a term expiring May 18, 2011.

*William B. Sansom, of Tennessee, to be a Member of the Board of Directors of the Tennessee Valley Authority for a term expiring May 18, 2009.

*Susan Richardson Williams, of Tennessee, to be a Member of the Board of Directors of the Tennessee Valley Authority for a term expiring May 18, 2007.

*Donald R. DePriest, of Mississippi, to be a Member of the Board of Directors of the Tennessee Valley Authority for a term expiring May 18, 2009.

*Howard A. Thrailkill, of Alabama, to be a Member of the Board of Directors of the Tennessee Valley Authority for the term prescribed by law.

By Mr. LUGAR for the Committee on Foreign Relations.

*Bernadette Mary Allen, of Maryland, to be Ambassador to the Republic of Niger.

Nominee: Bernadette M. Allen.

Post: Montreal.

Nominated: Niamey.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee:

1. Bernadette M. Allen: $100, 2004, National Democratic Committee.

2. Never married: N/A.

3. No children: N/A.

Raymond E. Allen, Jr., none; Lucille C. Johnson (deceased), (None).

5. Raymond E. Allen, Sr. (deceased), (none); Evangeline Allen (deceased), (none); Mary G. Clark (deceased), (none); William Clark (deceased), (none).

6. Adrian T. Allen (brother), none; Cheryl S. Allen (in-law), none.

7. Marnita L. Allen (sister), none.

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*Janice L. Jacobs, of Virginia, to be Ambassador to the Republic of Senegal, and to serve concurrently and without additional compensation as Ambassador to the Republic of Guinea-Bissau.

Nominee: Janice L. Jacobs.

Post: Dakar, Senegal.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee:

1. Self: None.

2. Spouse: Kenneth B. Friedman, none.

3. Children and Spouses: Eric A. Fichte, son, single, none; Kurt M. Fichte, son, single, none.

4. Parents: Robert Jacobs, father (deceased 1995), and Oma Lee Jacobs, mother (following amounts contributed in 2000, 2001, 2002, 2003 and 2004), $100, National Republican Party; $80, National Republican Women's Group. Total each year $180. Total 2000–2004–$900.

5. Grandparents: Clarence Jacobs, paternal grandfather (deceased 1963); Zylphia May Porter, paternal grandmother (deceased 1965); William Delmus Corgan, maternal grandfather (deceased 1932); Carrie Corgan Holt, maternal grandmother (deceased 1987).

6. Brothers and Spouses: Robert Jacobs, brother (deceased 2004), Virginia Lowe, sister-in-law, Lawrence J. Jacobs, brother, none; Sandra Pittman Jacobs, sister-in-law, none.

7. Sisters and Spouses: Linda Jacobs Wineberg, sister, $75.00 one-time contribution sometime in 2004 Kerry campaign; Paul Wineberg, brother-in-law, none.

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*Steven Alan Browning, of Texas, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador to the Republic of Uganda.

Nominee: Steven Alan Browning.

Post: Uganda.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee:

1. Self: none.

2. Spouse: none.

3. Children and Spouses: Son: Jefferson Andrew Dolan, Spouse: Kristin Thielen Dolan, Daughter: Stephanie Jayne Marie Dolan, Spouse: Tay Voye, none.

4. Parents: Cheaney Harris Browning (deceased), and Rosemary Miller Browning, none.

5. Grandparents: (all deceased), none.

6. Brothers and Spouses: Brother: Rickey Van Browning, Spouse: Barbara Sterling Browning, none.

7. Sisters and Spouses: (no sister).

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*Patricia Newton Moller, of Arkansas, to be Ambassador to the Republic of Burundi.

Nominee: Patricia Newton Moller.

Post: U.S. Embassy Bujumbura, Burundi.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee:

1. Self: Patricia Newton Moller, None.

2. Spouse: Gilbert Joseph Sperling, None.

3. Children and Spouses: Renee Emiko Sperling (stepdaughter), none, Jeff Durkin (spouse of Renee), none, Christopher Estvan Sperling (stepson), none, Stephanie Taleff (spouse of Christopher), none, Gilbert Hanspeter Sperling (stepson), none, Noriyo Komachi (spouse of Gilbert), none.

4. Parents: James Wilson Newton, none, Thelma Bell Newton, none.

5. Grandparents: Katie Irvin Bell (deceased), none, William Hester Bell (deceased), none, Charles Henry Newton (deceased), none, Willie Elnora Blackman Newton (deceased), none.

6. Brothers and Spouses: n/a.

7. Sisters and Spouses: Nancy Newton-Waldeck, none, Michael Waldeck (spouse of Nancy), none.

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*Jeanine E. Jackson, of Wyoming, to be Ambassador to Burkina Faso.

Nominee: Jeanine Elizabeth Jackson.

Post: Ambassador, Burkina Faso.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee:

1. Self: none.

2. Spouse: none.

3. Children and Spouses: none.

4. Parents: (deceased)

5. Grandparents: (deceased)

6. Brothers and Spouses: none.

7. Sisters and Spouses: none.

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*Kristie A. Kenney, of Virginia, to be Ambassador to the Republic of the Philippines.

Nominee: Kristie A. Kenney.

Post: Chief of Mission, Manila.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee:

1. Self: none.

2. Spouse: William R. Brownfield, none.

3. Children and Spouses: We have no children.

4. Parents: Jeremiah J. Kenney, Jr. (deceased), 05/08/2005 (no contributions prior to death); Elizabeth J. Kenney, no contributions.

5. Grandparents: Jeremiah J. Kenney (deceased), 1972; Selma J. Kenney (deceased), 1985; George Cornish (deceased), 1945; and Irma Cornish (deceased), 1972.

6. Brothers and Spouses: John J. Kenney (divorced), no contributions.

7. Sisters and Spouses: n/a.

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*Robert Weisberg, of Maryland, to be Ambassador to the Republic of Congo.

Nominee: Robert Weisberg.

Post: Brazzaville.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee:

1. Self: none.

2. Spouse: none.

3. Children and Spouses: Cyrus Weisberg, none.

4. Parents: Maurice Weisberg, none; Annette Weisberg (deceased).

5. Grandparents: Edward Weisberg (deceased;) Rebecca Weisberg (deceased); Arthur Koerner (deceased); and Elizabeth Koerner (deceased).

6. Brothers and Spouses: No brothers.

7. Sisters and Spouses: No sisters.

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*Janet Ann Sanderson, of Arizona, to be Ambassador to the Republic of Haiti.

Nominee: Janet Ann Sanderson.

Post: Ambassador to Haiti.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee:
1. Self: None.
2. Spouse: n/a.
3. Children and Spouses: n/a.
4. Parents: John M. Sanderson, None; Patricia M. Sanderson, (deceased).
5. Grandparents: Emil and Marjorie Budde (deceased); Gail and John Sanderson (deceased).
6. Brothers and Spouses: Michael Sanderson and Michelle McMahon, None.
7. Sisters and Spouses: n/a.

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*James D. McGee, of Florida, to serve concurrently and without additional compensation as Ambassador to the Union of Comoros.
Nominee: James David McGee.
Post: Union of Comoros.
The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.
Contributions, Amount, Date, and Donee:
1. Self: None.
2. Spouse: None.
3. Children and Spouses: n/a.
4. Parents: Ruby Mae McGee, none; and Jewel L. McGee (deceased), n/a.
5.Grandparents: James West Senior (deceased), n/a; Malvena West (deceased), n/a; David McGee (deceased), n/a; and Mary McGee (deceased), n/a.
6. Brothers and Spouses: Ronald N. McGee, none; Kathy McGee, none.
7. Sisters and Spouses: Mary Ann Dillahunty, none; Tyrone Dillahunty, none.

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*Gary A. Grappo, of Virginia, to be Ambassador to the Sultanate of Oman.
Nominee: Gary A. Grappo.
Post: Muscat, Oman.
The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.
Contributions, Amount, Date, and Donee:
1. Self: none.
2. Spouse: none.
3. Children and Spouses: Michelle (21), Alexander (19) & Kristina (17) Grappo; none.
4. Parents: Anthony and Viola Grappo, none.
5. Grandparents: Severio & Maria Marchese, and Alexander & Louise Grappo (deceased); none.
6. Brothers and Spouses: Anthony P. & Deb Grappo; $2,000, 12/2001, Outback Steakhouse PAC; $4,995, 11/2002, Outback Steakhouse PAC; $5,000, 12/2003, Outback Steakhouse PAC; and $5,000, 12/2004, Outback Steakhouse PAC.
7. Sisters and Spouses: none.

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*Patricia A. Butenis, of Virginia, to be Ambassador to the People's Republic of Bangladesh.
Nominee: Patricia A. Butenis.
The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.
Contributions, Amount, Date, and Donee:
1. Self: none.
2. Spouse: n/a.
3. Children and Spouses: n/a.
4. Parents: Hafia Butenis, none; Charles P. Butenis (deceased).
5. Grandparents: Alexander Michalezka (deceased); Anastasia Michalezka (deceased); Casimir Butenis (deceased); Petronella Leszinski (deceased).
6. Brothers and Spouses: n/a.
7. Sisters and Spouses: Linda Butenis Vorsa, none; Nicholi Vorsa, none; Donna Butenis Mulraney, none; Andrew Mulraney, none.

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*Donald T. Bliss, of Maryland, for the rank of Ambassador during his tenure of service as Representative of the United States of America on the Council of the International Civil Aviation Organization.
*Claudia A. McMurray, of Virginia, to be Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.
*Bradford R. Higgins, of Connecticut, to be an Assistant Secretary of State (Resource Management).
*Bradford R. Higgins, of Connecticut, to be Chief Financial Officer, Department of State.
*Jackie Wolcott Sanders, of Virginia, to be Alternate Representative of the United States of America for Special Political Affairs in the United Nations, with the rank of Ambassador.
*Jackie Wolcott Sanders, of Virginia, to be an Alternate Representative of the United States of America to the Sessions of the General Assembly of the United Nations during her tenure of service as Alternate Representative of the United States of America for Special Political Affairs in the United Nations.
*Michael W. Michalak, of Michigan, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during his tenure of service as United States Senior Official to the Asia-Pacific Economic Cooperation Forum.
*Ben S. Bernanke, of New Jersey, to be United States Alternate Governor of the International Monetary Fund for a term of five years.

Mr. LUGAR. Mr. President, for the Committee on Foreign Relations I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

Foreign Service nominations beginning with Anne Elizabeth Linnee and ending with Kathleen Anne Yu, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on December 13, 2005.

Foreign Service nominations beginning with Lisa M. Anderson and ending with Gregory C. Yemm, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on December 14, 2005.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. SNOWE (for herself and Mr. LOTT):

S. 2287. A bill to amend the Internal Revenue Code of 1986 to increase and permanently extend the expensing of certain depreciable business assets for small businesses; to the Committee on Finance.

By Mr. FEINGOLD (for himself and Mr. MCCAIN):

S. 2288. A bill to modernize water resources planning, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BUNNING:

S. 2289. A bill to amend title XVIII of the Social Security Act to increase the per resident payment floor for direct graduate medical education payments under the Medicare program; to the Committee on Finance.

By Mr. PRYOR (for himself, Mr. WARNER, and Mr. TALENT):

S. 2290. A bill to provide for affordable natural gas by rebalancing domestic supply and demand and to promote the production of natural gas from domestic resources; to the Committee on Energy and Natural Resources.

By Mr. KENNEDY (for himself, Mr. DODD, Mr. HARKIN, and Mr. BINGAMAN):

S. 2291. A bill to provide for the establishment of a biodefense injury compensation program and to provide indemnification for producers of countermeasures; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SPECTER (for himself, Mr. LEAHY, Mr. CORNYN, Mr. CHAMBLISS, and Mrs. FEINSTEIN):

S. 2292. A bill to provide relief for the Federal judiciary from excessive rent charges; to the Committee on the Judiciary.

By Mr. ALLEN:

S. J. Res. 31. A joint resolution proposing an amendment to the Constitution of the United States relative to require a balancing of the budget; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 241

At the request of Ms. SNOWE, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 241, a bill to amend section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act.

S. 267

At the request of Mr. CRAIG, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 548

At the request of Mr. CONRAD, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 548, a bill to amend the Food Security Act of 1985 to encourage owners and operators of privately-held

farm, ranch, and forest land to voluntarily make their land available for access by the public under programs administered by States and tribal governments.

S. 577

At the request of Ms. COLLINS, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 577, a bill to promote health care coverage for individuals participating in legal recreational activities or legal transportation activities.

S. 829

At the request of Mr. GRASSLEY, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 829, a bill to allow media coverage of court proceedings.

S. 1112

At the request of Mr. GRASSLEY, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 1112, a bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001.

S. 1262

At the request of Mr. FRIST, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 1262, a bill to reduce healthcare costs, improve efficiency, and improve healthcare quality through the development of a nationwide interoperable health information technology system, and for other purposes.

S. 1568

At the request of Mr. BROWNBACK, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 1568, a bill to enhance the ability of community banks to foster economic growth and serve their communities, and for other purposes.

S. 2123

At the request of Mr. ALLARD, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 2123, a bill to modernize the manufactured housing loan insurance program under title I of the National Housing Act.

S. 2172

At the request of Ms. LANDRIEU, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2172, a bill to provide for response to Hurricane Katrina by establishing a Louisiana Recovery Corporation, providing for housing and community rebuilding, and for other purposes.

S. 2283

At the request of Mr. FRIST, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2283, a bill to establish a congressional commemorative medal for organ donors and their families.

S. RES. 372

At the request of Mr. KERRY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. Res. 372, a resolution expressing the sense of the Senate that oil and gas companies should not be provided outer Continental Shelf royalty relief when energy prices are at historic highs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE (for herself and Mr. LOTT):

S. 2287. A bill to amend the Internal Revenue Code of 1986 to increase and permanently extend the expensing of certain depreciable business assets for small businesses; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce legislation that allows small businesses to expense more of their equipment and business assets, which will create incentives to invest in new technology, expand their operations, and most important, create jobs. Small businesses are the engine that drives our Nation's economy and I believe this bill strengthens their ability to lead the way. I am pleased to join my colleague from Mississippi, Senator TRENT LOTT, as we work to move this important initiative for small businesses from legislation to law.

As the Chair of the Senate Committee on Small Business and Entrepreneurship, I drafted this bill in response to the repeated requests from small businesses in my State of Maine and from across the Nation to allow them to expense more of their investments like the purchase of essential new equipment. The bill modifies the Internal Revenue Code and would double the amount a small business can expense from $100,000 to $200,000, and make the provision permanent as President Bush also proposed this change in his fiscal year 2007 tax proposals. With small businesses representing 99 percent of all employers, creating 75 percent of net new jobs and contributing 51 percent of private-sector output, their size is the only 'small' aspect about them.

By doubling and making permanent the current expensing limit and indexing these amounts for inflation, this bill will achieve two important objectives. First, qualifying businesses will be able to write off more of the equipment purchases today, instead of waiting five, seven or more years to recover their costs through depreciation. That represents substantial savings both in dollars and in the time small businesses would otherwise have to spend complying with complex and confusing depreciation rules. Moreover, new equipment will contribute to continued productivity growth in the business community, which economic experts have repeatedly stressed is essential to the long-term vitality of our economy.

Second, as a result of this bill, more businesses will qualify for this benefit because the phase-out limit will be increased to $800,000 in new assets purchases. At the same time, small business capital investment will be pumping more money into the economy. Accordingly, this is a win-win for small business and the economy as a whole.

This legislation is a tremendous opportunity to help small enterprises succeed by providing an incentive for reinvestment and leaving them more of their earnings to do just that. I urge my colleagues to join me in supporting this vital legislation as we work with the President to enact this investment incentive into law.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2287

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE AND PERMANENT EXTENSION FOR EXPENSING FOR SMALL BUSINESS.

(a) IN GENERAL.—Paragraph (1) of section 179(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking ''$25,000 ($100,000 in the case of taxable years beginning after 2002 and before 2008)'' and inserting ''$200,000''.

(b) INCREASE IN QUALIFYING INVESTMENT AT WHICH PHASEOUT BEGINS.—Paragraph (2) of section 179(b) of such Code (relating to reduction in limitation) is amended by striking ''$200,000 ($400,000 in the case of taxable years beginning after 2002 and before 2008)'' and inserting ''$800,000''.

(c) INFLATION ADJUSTMENTS.—Section 179(b)(5)(A) of such Code (relating to inflation adjustments) is amended—

(1) in the matter preceding clause (i)—

(A) by striking ''after 2003 and before 2008'' and inserting ''after 2007'', and

(B) by striking ''the $100,000 and $400,000 amounts'' and inserting ''the $200,000 and $800,000 amounts'', and

(2) in clause (ii), by striking ''calendar year 2002'' and inserting ''calendar year 2006''.

(d) REVOCATION OF ELECTION.—Section 179(c)(2) of such Code (relating to election irrevocable) is amended to read as follows:

''(2) REVOCABILITY OF ELECTION.—Any election made under this section, and any specification contained in any such election, may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.''.

(e) OFF-THE-SHELF COMPUTER SOFTWARE.—Section 179(d)(1)(A)(ii) of such Code (relating to section 179 property) is amended by striking ''and before 2008''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

By Mr. FEINGOLD (for himself and Mr. MCCAIN):

S. 2288. A bill to modernize water resources planning, and for other purposes; to the Committee on Environment and Public Works.

Mr. FEINGOLD. Mr. President, today I introduce the Water Resources Planning and Modernization Act of 2006, a bill that will bring our water resources policy into the 21st century. I am pleased to be joined in this legislation by the senior Senator from Arizona, Mr. MCCAIN. We have worked together for some time to modernize the Army

Corps of Engineers and I thank Senator MCCAIN for his continued commitment to this issue.

While the bill I introduce today builds on previous bills we have introduced, it also reflects a recognition that we must respond to the tragic events of the recent past and make thoughtful and needed adjustments to all aspects of water resources planning. The entire process, starting with the principles upon which the plans are developed all the way to discussions of where we invest limited Federal resources, requires attention and revision. Congress cannot afford to authorize additional Army Corps projects until it has considered and passed the Water Resources Planning and Modernization Act. From ensuring large projects are sound to using natural resources to protect our communities, modernizing water resources policy is a national priority.

As we all know, our nation is staring down deficits that just a few years ago were unimaginable. Our current financial situation demands pragmatic approaches and creative collaborations to save taxpayer dollars. The bill I introduce today provides a unique opportunity to endorse such approaches and such collaborations.

The Water Resources Planning and Modernization Act of 2006 represents a sensible effort to increase our environmental stewardship and significantly reduce the government waste inherent in poorly designed or low priority Army Corps of Engineers projects. It represents a way to both protect the environment and save taxpayer dollars. With support from Taxpayers for Common Sense Action, National Taxpayers Union, Citizens Against Government Waste, American Rivers, National Wildlife Federation, Earthjustice, Environmental Defense, Republicans for Environmental Protection, Sierra Club, and the World Wildlife Fund, the bill has the backing of a strong, creative coalition.

Several years have passed since I tried to offer an amendment to the Water Resources Development Act of 2000 to require independent review of Army Corps of Engineers' projects. Much has changed since the 2000 debate, and yet too much remains the same. We now have more studies from the National Academy of Sciences, the Government Accountability Office, and others—even the presidentially appointed U.S. Commission on Ocean Policy—to point to in support of our efforts. We have also had a disaster of historic proportion. Hurricane Katrina highlighted problems that we would be irresponsible to ignore.

The Water Resources Planning and Modernization Act of 2006 can be broadly divided into five parts: focusing our resources, identifying vulnerabilities, updating the Army Corps of Engineer's planning guidelines, guaranteeing sound projects and responsible spending, and valuing our natural resources.

Our current prioritization process is not serving the public good. To address this problem, the bill reinvigorates the Water Resources Council, originally established in 1965, and charges it with providing Congress a prioritized list of authorized water resource projects within one year of enactment and then every two years following. The prioritized list would also be printed in the Federal register for the public to see. The Water Resources Council described in the bill, comprised of cabinet-level officials, would bring together varied perspectives to shape a list of national needs. In short, the prioritization process would be improved to make sure Congress has the tools to more wisely invest limited resources while also increasing public transparency in decision making both needed and reasonable improvements to the status quo.

Taking stock of our vulnerabilities to natural disasters must also be a priority. For this reason, the bill also directs the Water Resources Council to identify and report to Congress on the Nation's vulnerability to flood and related storm damage, including the risk to human life and property, and relative risks to different regions of the country. The Water Resources Council would also recommend improvements to the Nation's various flood damage reduction programs to better address those risks. Many of these improvements were discussed in a government report following the 1993 floods so the building blocks are available; we just need to update the assessment. Then, of course, we must actually take action based on the assessment. To help speed such action, the legislation specifies that the administration will submit a response to Congress, including legislative proposals to implement the recommendations, on the Water Resources Council report no later than 90 days after the report has been made public. We cannot afford to have this report, which will outline improvements to our flood damage reduction programs, languish like others before it.

The process by which the Army Corps of Engineers analyzes water projects should undergo periodic revision. Unfortunately, the corps' principles and guidelines, which bind the planning process, have not been updated since 1983. This is why the bill requires that the Water Resources Council work in coordination with the National Academy of Sciences to propose periodic revisions to the corps' planning principles and guidelines, regulations, and circulars.

Updating the project planning process should involve consideration of a variety of issues, including the use of modern economic analysis and the same discount rates as used by all other Federal agencies. Simple steps such as these will lead to more precise estimates of project costs and benefits, a first step to considering whether a project should move forward.

To ensure that corps' water resources projects are sound, the bill requires independent review of those projects estimated to cost over $25 million, those requested by a Governor of an affected State, those which the head of a Federal agency has determined may lead to a significant adverse impact, or those that the Secretary of the Army has found to be controversial. As crafted in the bill, independent review should not increase the length of time required for project planning but would protect the public both those in the vicinity of massive projects and those whose tax dollars are funding projects.

We must do a better job of valuing our natural resources, such as wetlands, that provide important services. These resources can help to buffer communities from storms and filter contaminants out of our water. Recognizing the role of these natural systems, the Water Resources Planning and Modernization Act of 2006 requires that corps' water resources projects meet the same mitigation standard as required by everyone else under the Clean Water Act. Where States have adopted stronger mitigation standards, the corps must meet those standards. I feel very strongly that the Federal government should be able to live up to this requirement. Unfortunately, all too often, the corps has not completed required mitigation. This legislation will make sure that mitigation is completed, that the true costs of mitigation are accounted for in corps' projects, and that the public is able to track the progress of mitigation projects.

Modernizing all aspects of our water resources policy will help restore credibility to a Federal agency historically rocked by scandal and currently plagued by public skepticism. Congress has long used the Army Corps of Engineers to facilitate favored pork-barrel projects, while periodically expressing a desire to change its ways. Back in 1836, a House Ways and Means Committee report referred to Congress ensuring that the corps sought ''actual reform, in the further prosecution of public works.'' Over 150 years later, the need for actual reform is stronger than ever.

My office has strong working relationships with the Detroit, Rock Island, and St. Paul District Offices that service Wisconsin, and I do not want this bill to be misconstrued as reflecting on the work of those district offices. What I do want is the fiscal and management cloud over the entire Army Corps to dissipate so that the corps can continue to contribute to our environment and our economy without wasting taxpayer dollars.

I wish the changes we are proposing today were not needed, but unfortunately that is not the case. In fact, if there were ever a need for the bill, it is now. We must make sure that future corps' projects produce predicted benefits, are in furtherance of national priorities, and do not have negative environmental impacts. This bill gives the corps the tools it needs to a better job and focuses the attention of Congress

on national needs, which is what the American taxpayers and the environment deserve.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2288

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Water Resources Planning and Modernization Act of 2006''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COUNCIL.—The term ''Council'' means the Water Resources Council established under section 101 of the Water Resources Planning Act (42 U.S.C. 1962a).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Army.

SEC. 3. NATIONAL WATER RESOURCES PLANNING AND MODERNIZATION POLICY.

It is the policy of the United States that all water resources projects carried out by the Corps of Engineers shall—

(1) reflect national priorities for flood damage reduction, navigation, and ecosystem restoration; and

(2) seek to avoid the unwise use of floodplains, minimize vulnerabilities in any case in which a floodplain must be used, protect and restore the extent and functions of natural systems, and mitigate any unavoidable damage to natural systems.

SEC. 4. MEETING THE NATION'S WATER RESOURCE PRIORITIES.

(a) REPORT ON THE NATION'S FLOOD RISKS.—Not later than 18 months after the date of enactment of this Act, the Council shall submit to the President and Congress a report describing the vulnerability of the United States to damage from flooding and related storm damage, including the risk to human life, the risk to property, and the comparative risks faced by different regions of the country. The report shall assess the extent to which the Nation's programs relating to flooding are addressing flood risk reduction priorities and the extent to which those programs may unintentionally be encouraging development and economic activity in floodprone areas, and shall provide recommendations for improving those programs in reducing and responding to flood risks. Not later than 90 days after the report required by this subsection is published in the Federal Register, the Administration shall submit to Congress a report that responds to the recommendations of the Council and includes proposals to implement recommendations of the Council.

(b) PRIORITIZATION OF WATER RESOURCES PROJECTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Council shall submit to Congress an initial report containing a prioritized list of each water resources project of the Corps of Engineers that is not being carried out under a continuing authorities program, categorized by project type and recommendations with respect to a process to compare all water resources projects across project type. The Council shall submit to Congress a prioritized list of water resources projects of the Corps of Engineers every 2 years following submission of the initial report. In preparing the prioritization of projects, the Council shall endeavor to balance stability in the rankings from year to year with recognizing newly authorized projects. Each report prepared under this paragraph shall provide documentation and description of any criteria used in addition to those set forth in paragraph (2) for comparing water resources projects and the assumptions upon which those criteria are based.

(2) PROJECT PRIORITIZATION CRITERIA.—In preparing a report under paragraph (1), the Council shall prioritize each water resource project of the Corps of Engineers based on the extent to which the project meets at least the following criteria:

(A) For flood damage reduction projects, the extent to which such a project—

(i) addresses the most critical flood damage reduction needs of the United States as identified by the Council;

(ii) does not encourage new development or intensified economic activity in flood prone areas and avoids adverse environmental impacts; and

(iii) provides significantly increased benefits to the United States through the protection of human life, property, economic activity, or ecosystem services.

(B) For navigation projects, the extent to which such a project—

(i) produces a net economic benefit to the United States based on a high level of certainty that any projected trends upon which the project is based will be realized;

(ii) addresses priority navigation needs of the United States identified through comprehensive, regional port planning; and

(iii) minimizes adverse environmental impacts.

(C) For environmental restoration projects, the extent to which such a project—

(i) restores the natural hydrologic processes and spatial extent of an aquatic habitat;

(ii) is self-sustaining; and

(iii) is cost-effective or produces economic benefits.

(3) SENSE OF CONGRESS.—It is the sense of Congress that to promote effective prioritization of water resources projects, no project should be authorized for construction unless a final Chief's report recommending construction has been submitted to Congress, and annual appropriations for the Corps of Engineers' Continuing Authorities Programs should be distributed by the Corps of Engineers to those projects with the highest degree of design merit and the greatest degree of need, consistent with the applicable criteria established under paragraph (2).

(c) MODERNIZING WATER RESOURCES PLANNING GUIDELINES.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and every 5 years thereafter, the Council, in coordination with the National Academy of Sciences, shall propose revisions to the planning principles and guidelines, regulations, and circulars of the Corps of Engineers to improve the process by which the Corps of Engineers analyzes and evaluates water projects.

(2) PUBLIC PARTICIPATION.—The Council shall solicit public and expert comment and testimony regarding proposed revisions and shall subject proposed revisions to public notice and comment.

(3) REVISIONS.—Revisions proposed by the Council shall improve water resources project planning through, among other things—

(A) focusing Federal dollars on the highest water resources priorities of the United States;

(B) requiring the use of modern economic principles and analytical techniques, credible schedules for project construction, and current discount rates as used by all other Federal agencies;

(C) discouraging any project that induces new development or intensified economic activity in flood prone areas, and eliminating biases and disincentives to providing projects to low-income communities, including fully accounting for the prevention of loss of life as required by section 904 of the Water Resources Development Act of 1986 (33 U.S.C. 2281);

(D) eliminating biases and disincentives that discourage the use of nonstructural approaches to water resources development and management, and fully accounting for the flood protection and other values of healthy natural systems;

(E) utilizing a comprehensive, regional approach to port planning;

(F) promoting environmental restoration projects that reestablish natural processes;

(G) analyzing and incorporating lessons learned from recent studies of Corps of Engineers programs and recent disasters such as Hurricane Katrina and the Great Midwest Flood of 1993; and

(H) ensuring the effective implementation of the National Water Resources Planning and Modernization Policy established by this Act.

(d) REVISION OF PLANNING GUIDELINES.—Not later than 180 days after submission of the proposed revisions required by subsection (b), the Secretary shall implement the recommendations of the Council by incorporating the proposed revisions into the planning principles and guidelines, regulations, and circulars of the Corps of Engineers. These revisions shall be subject to public notice and comment pursuant to subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the ''Administrative Procedure Act''). Effective beginning on the date on which the Secretary carries out the first revision under this paragraph, the Corps of Engineers shall not be subject to—

(1) subsections (a) and (b) of section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962d–17); and

(2) any provision of the guidelines entitled ''Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies'' and dated 1983, to the extent that such a provision conflicts with a guideline revised by the Secretary.

(e) AVAILABILITY.—Each report prepared under this section shall be published in the Federal Register and submitted to the Committees on Environment and Public Works and Appropriations of the Senate and the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives.

(f) WATER RESOURCES COUNCIL.—Section 101 of the Water Resources Planning Act (42 U.S.C. 1962a) is amended in the first sentence by inserting ''the Secretary of Homeland Security, the Chairperson of the Council on Environmental Quality,'' after ''Secretary of Transportation,''.

(g) FUNDING.—In carrying out this section, the Council shall use funds made available for the general operating expenses of the Corps of Engineers.

SEC. 5. EFFECTIVE PROJECT PLANNING.

(a) DEFINITIONS.—In this section:

(1) AFFECTED STATE.—The term ''affected State'' means a State that is located, in whole or in part, within the drainage basin in which a water resources project is carried out and that would be economically or environmentally affected as a result of the project.

(2) DIRECTOR.—The term ''Director'' means the Director of Independent Review appointed under subsection (c).

(3) STUDY.—The term ''study'' means a feasibility report, general reevaluation report,

or environmental impact statement prepared by the Corps of Engineers.

(b) PROJECTS SUBJECT TO INDEPENDENT REVIEW.—

(1) IN GENERAL.—The Secretary shall ensure that each study for each water resources project described in paragraph (2) is subject to review by an independent panel of experts established under this section.

(2) PROJECTS SUBJECT TO REVIEW.—A water resources project shall be subject to review under this section if—

(A) the project has an estimated total cost of more than $25,000,000, including mitigation costs;

(B) the Governor of an affected State requests in writing to the Secretary the establishment of an independent panel of experts for the project;

(C) the head of a Federal agency charged with reviewing the project determines that the project is likely to have a significant adverse impact on cultural, environmental, or other resources under the jurisdiction of the agency, and requests in writing to the Secretary the establishment of an independent panel of experts for the project; or

(D) the Secretary determines that the project is controversial based upon a finding that—

(i) there is a significant dispute regarding the size, nature, or effects of the project;

(ii) there is a significant dispute regarding the economic or environmental costs or benefits of the project; or

(iii) there is a significant dispute regarding the potential benefits to communities affected by the project of a project alternative that was not fully considered in the study.

(3) WRITTEN REQUESTS.—Not later than 30 days after the date on which the Secretary receives a written request of any party, or on the initiative of the Secretary, the Secretary shall determine whether a project is controversial.

(c) DIRECTOR OF INDEPENDENT REVIEW.—

(1) IN GENERAL.—The Inspector General of the Army shall appoint in the Office of the Inspector General of the Army a Director of Independent Review. The term of a Director appointed under this subsection shall be 6 years, and an individual may serve as the Director for not more than 2 nonconsecutive terms.

(2) QUALIFICATIONS.—The Inspector General of the Army shall select the Director from among individuals who are distinguished experts in engineering, hydrology, biology, economics, or another discipline relating to water resources management. The Inspector General of the Army shall not appoint an individual to serve as the Director if the individual has a financial interest in or close professional association with any entity with a financial interest in a water resources project that, on the date of appointment of the Director, is under construction, in the preconstruction engineering and design phase, or under feasibility or reconnaissance study by the Corps of Engineers. The Inspector General of the Army may establish additional criteria if necessary to avoid a conflict of interest between the individual appointed as Director and the projects subject to review.

(3) DUTIES.—The Director shall establish a panel of experts to review each water resources project that is subject to review under subsection (b).

(d) ESTABLISHMENT OF PANELS.—

(1) IN GENERAL.—Not later than 90 days before the release of a draft study subject to review under subsection (b)(2)(A), and not later than 30 days after a determination that a review is necessary under subparagraph (B), (C), or (D) of subsection (b)(2), the Director shall establish a panel of experts to review the draft study. Panels may be convened earlier on the request of the Chief of Engineers.

(2) MEMBERSHIP.—A panel of experts established by the Director for a project shall be composed of not less than 5 nor more than 9 independent experts (including 1 or more engineers, hydrologists, biologists, and economists) who represent a range of areas of expertise.

(3) LIMITATION ON APPOINTMENTS.—The Director shall apply the National Academy of Science's policy for selecting committee members to ensure that members of a review panel have no conflict with the project being reviewed.

(4) CONSULTATION.—The Director shall consult with the National Academy of Sciences in developing lists of individuals to serve on panels of experts under this section.

(5) NOTIFICATION.—To ensure that the Director is able to effectively carry out the duties of the Director under this section, the Secretary shall notify the Director in writing not later than 120 days before the release of a draft study for a project costing more than $25,000,000 or for which a preliminary assessment suggests that a panel of experts may be required.

(6) COMPENSATION.—An individual serving on a panel of experts under this section shall be compensated at a rate of pay to be determined by the Inspector General of the Army.

(7) TRAVEL EXPENSES.—A member of a panel of experts under this section shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the panel.

(e) DUTIES OF PANELS.—A panel of experts established for a water resources project under this section shall—

(1) review each draft study prepared for the project;

(2) assess the adequacy of the economic, scientific, and environmental models used by the Secretary in reviewing the project and assess whether the best available economic and scientific data and methods of analysis have been used;

(3) assess the extent to which the study complies with the National Water Resources Planning and Modernization Policy established by this Act;

(4) evaluate the engineering assumptions and plans for any flood control structure whose failure could result in significant flooding;

(5) receive from the public written and oral comments concerning the project;

(6) submit an Independent Review Report to the Secretary that addresses the economic, engineering, and environmental analyses of the project, including the conclusions of the panel, with particular emphasis on areas of public controversy, with respect to the study; and

(7) submit a Final Assessment Report to the Secretary that briefly provides the views of the panel on the extent to which the final study prepared by the Corps adequately addresses issues or concerns raised by the panel in the Independent Review Report.

(f) DEADLINES FOR PANEL REPORTS.—A panel shall submit its Independent Review Report under subsection (e)(6) to the Secretary not later than 90 days after the close of the public comment period or not later than 180 days after the panel is convened, whichever is later. A panel shall submit its Final Assessment Report under subsection (e)(7) to the Secretary not later than 30 days after release of the final study. The Director may extend these deadlines for good cause shown.

(g) RECOMMENDATIONS OF PANEL.—

(1) CONSIDERATION BY SECRETARY.—If the Secretary receives an Independent Review Report on a water resources project from a panel of experts under subsection (e)(6), the Secretary shall, at least 30 days before releasing a final study for the project, take into consideration any recommendations contained in the report, prepare a written explanation for any recommendations not adopted, and make such written explanations available to the public, including through posting on the Internet.

(2) INCONSISTENT RECOMMENDATIONS AND FINDINGS.—Recommendations and findings of the Secretary that are inconsistent with the recommendations and findings of a panel of experts under this section shall not be entitled to deference in a judicial proceeding.

(3) SUBMISSION TO CONGRESS AND PUBLIC AVAILABILITY.—After receiving an Independent Review Report under subsection (e)(6) or a Final Assessment Report under subsection (e)(7), the Secretary shall immediately make a copy of the report available to the public. The Secretary also shall immediately make available to the public any written response by the Secretary prepared pursuant to paragraph (1). Copies of all independent review panel reports and all written responses by the Secretary also shall be included in any report submitted to Congress concerning the project.

(h) RECORD OF DECISION.—The Secretary shall not issue a record of decision or a report of the Chief of Engineers for a water resources project subject to review under this section until, at the earliest, 14 days after the deadline for submission of the Final Assessment Report required under subsection (e)(7).

(i) PUBLIC ACCESS TO INFORMATION.—The Secretary shall ensure that information relating to the analysis of any water resources project by the Corps of Engineers, including all supporting data, analytical documents, and information that the Corps of Engineers has considered in the justification for and analysis of the project, is made available to the public on the Internet and to an independent review panel, if a panel is established for the project. The Secretary shall not make information available under this paragraph if the Secretary determines that the information is a trade secret of any person that provided the information to the Corps of Engineers.

(j) COSTS OF REVIEW.—

(1) IN GENERAL.—The cost of conducting a review of a water resources project under this section shall not exceed—

(A) $250,000 for a project, if the total cost of the project in current year dollars is less than $50,000,000; and

(B) 0.5 percent of the total cost of the project in current year dollars, if the total cost is $50,000,000 or more.

(2) WAIVER.—The Secretary may waive these cost limitations if the Secretary determines that the waiver is appropriate.

(k) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to a panel of experts established under this section.

SEC. 6. MITIGATION.

(a) MITIGATION.—Section 906(d) of the Water Resources Development Act of 1986 (33 U.S.C. 2283(d)) is amended—

(1) in paragraph (1), by striking ''to the Congress'' and inserting ''to Congress, and shall not choose a project alternative in any final record of decision, environmental impact statement, or environmental assessment,'', and by inserting in the second sentence ''and other habitat types'' after ''bottomland hardwood forests''; and

(2) by adding at the end the following:

''(3) MITIGATION REQUIREMENTS.—

''(A) MITIGATION.—To mitigate losses to flood damage reduction capabilities and fish and wildlife resulting from a water resources project, the Secretary shall ensure that mitigation for each water resources project complies fully with the mitigation standards and policies established by each State in which the project is located. Under no circumstances shall the mitigation required for a water resources project be less than would be required of a private party or other entity under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344).

''(B) MITIGATION PLAN.—The specific mitigation plan for a water resources project required under paragraph (1) shall include, at a minimum—

''(i) a detailed plan to monitor mitigation implementation and ecological success, including the designation of the entities that will be responsible for monitoring;

''(ii) specific ecological success criteria by which the mitigation will be evaluated and determined to be successful, prepared in consultation with the Director of the United States Fish and Wildlife Service or the Director of the National Marine Fisheries Service, as appropriate, and each State in which the project is located;

''(iii) a detailed description of the land and interests in land to be acquired for mitigation, and the basis for a determination that land and interests are available for acquisition;

''(iv) sufficient detail regarding the chosen mitigation sites, and types and amount of restoration activities to be conducted, to permit a thorough evaluation of the likelihood of the ecological success and aquatic and terrestrial resource functions and habitat values that will result from the plan; and

''(v) a contingency plan for taking corrective actions if monitoring demonstrates that mitigation efforts are not achieving ecological success as described in the ecological success criteria.

''(4) DETERMINATION OF MITIGATION SUCCESS.—

''(A) IN GENERAL.—Mitigation under this subsection shall be considered to be successful at the time at which monitoring demonstrates that the mitigation has met the ecological success criteria established in the mitigation plan.

''(B) EVALUATION AND REPORTING.—The Secretary shall consult annually with the Director of the United States Fish and Wildlife Service and the Director of the National Marine Fisheries Service, as appropriate, and each State in which the project is located, on each water resources project requiring mitigation to determine whether mitigation monitoring for that project demonstrates that the project is achieving, or has achieved, ecological success. Not later than 60 days after the date of completion of the annual consultation, the Director of the United States Fish and Wildlife Service or the Director of the National Marine Fisheries Service, as appropriate, shall, and each State in which the project is located may, submit to the Secretary a report that describes—

''(i) the ecological success of the mitigation as of the date of the report;

''(ii) the likelihood that the mitigation will achieve ecological success, as defined in the mitigation plan;

''(iii) the projected timeline for achieving that success; and

''(iv) any recommendations for improving the likelihood of success.

The Secretary shall respond in writing to the substance and recommendations contained in such reports not later than 30 days after the date of receipt. Mitigation monitoring shall continue until it has been demonstrated that the mitigation has met the ecological success criteria.''.

(b) MITIGATION TRACKING SYSTEM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish a recordkeeping system to track, for each water resources project constructed, operated, or maintained by the Secretary and for each permit issued under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344)—

(A) the quantity and type of wetland and other habitat types affected by the project, project operation, or permitted activity;

(B) the quantity and type of mitigation required for the project, project operation, or permitted activity;

(C) the quantity and type of mitigation that has been completed for the project, project operation, or permitted activity; and

(D) the status of monitoring for the mitigation carried out for the project, project operation, or permitted activity.

(2) REQUIRED INFORMATION AND ORGANIZATION.—The recordkeeping system shall—

(A) include information on impacts and mitigation described in paragraph (1) that occur after December 31, 1969; and

(B) be organized by watershed, project, permit application, and zip code.

(3) AVAILABILITY OF INFORMATION.—The Secretary shall make information contained in the recordkeeping system available to the public on the Internet.

SEC. 7. PROJECT ADMINISTRATION.

(a) CHIEF'S REPORTS.—The Chief of Engineers shall not submit a Chief's report to Congress recommending construction of a water resources project until that Chief's report has been reviewed and approved by the Secretary of the Army.

(b) PROJECT TRACKING.—The Secretary shall assign a unique tracking number to each water resources project, to be used by each Federal agency throughout the life of the project.

(c) REPORT REPOSITORY.—The Secretary shall maintain at the Library of Congress a copy of each final feasibility study, final environmental impact statement, final reevaluation report, record of decision, and report to Congress prepared by the Corps of Engineers. These documents shall be made available to the public for review, and electronic copies of those documents shall be permanently available, through the Internet website of the Corps of Engineers.

Mr. MCCAIN. Mr. President, I am pleased to join with Senator FEINGOLD in introducing the Water Resources Planning and Modernization Act of 2006. This legislation is designed to take a post-Katrina approach to Army Corps of Engineers projects. It would provide for a more effective system for selecting and funding Army Corps projects that help to protect our citizens against damage caused by floods, hurricanes and other natural disasters.

Last August this Nation witnessed a horrible national disaster. When Hurricane Katrina hit, it brought with it destruction and tragedy beyond compare; more so than our Nation has seen in decades. Some six months later, the Gulf Coast region is still largely in the early stages of attempting to rebuild and recover and there is a long road ahead. As our Nation continues to dedicate significant resources to the reconstruction effort, we must be vigilant in our oversight obligations and take appropriate actions based on the many lessons learned from this tragedy.

One area that most would agree deserves needed attention concerns the Army Corps system. Funding is distributed in a manner that is not always awarded the most urgent projects. Because of this, citizens can end up paying for unnecessary and irresponsible Army Corps projects with their tax dollars and their safety. It is time for us to take a new approach to how the Army Corps does business. With lessons learned from Katrina, we can and must shepherd in a new era within the Army Corps that prioritizes critical projects and allows the American taxpayers to know that their money is being spent in an effective and efficient manner.

The Water Resources Planning and Modernization Act is the only Corps related measure that has been introduced in the Senate since Katrina tragically struck that truly takes a lessons-learned approach. Any measure acted upon by this Congress regarding the Corps simply must account for the most up to date information available. We owe it to the American public.

Historically, Congress has considered water projects costing many billions of taxpayer dollars as essential expenditures—regardless of the environmental costs or public benefits. That is why the modernization procedures in this bill are designed to achieve more critical and cost-effective expenditures for Corps water projects that will yield more environmental, economic, and social benefits. The need for these changes has been acknowledged by many for some time, but never has the need to spend scarce taxpayer dollars wisely been as crucial as it is now.

The Corps procedures for planning and approving projects, as well as the Congressional system for funding projects, are broken, but they can be fixed. The reforms in our bill are based on thorough program analysis and common sense. I commend Senator FEINGOLD for his efforts to build on and improve upon the legislation we have previously introduced. Corps modernization has been a priority that Senator FEINGOLD and I have shared for years but never before has there been such an appropriate atmosphere and urgent need to move forward on these overdue reforms.

Provisions of the legislation we are introducing today provide for a process to modify and modernize the Corps planning and approval procedures to consider economic, public, and environmental objectives. Independent review of Corps projects and a clear national prioritization of Corps projects would ensure that the most beneficial projects are constructed. Effective measures for mitigation of environmental and other damage caused by projects would be required and monitored.

With support from Taxpayers for Common Sense Action, National Taxpayers Union, Citizens Against Government Waste, American Rivers, National Wildlife Federation, Earthjustice, Environmental Defense,

Republicans for Environmental Protection, Sierra Club, and the World Wildlife Fund, the bill has broad interest and impact.

Water projects that provide economic and environmental benefits to our Nation's citizens—the hardworking American taxpayers—serve the common good and reflect our common interest in fiscal responsibility.

I urge my colleagues to support this legislation.

By Mr. BUNNING:

S. 2289. A bill to amend title XVIII of the Social Security Act to increase the per resident payment floor for direct graduate medical education payments under the Medicare program; to the Committee on Finance.

Mr. BUNNING. Mr. President, today I am introducing important legislation that will have an impact on many of the hospitals in my State, along with hundreds of hospitals in other States. This legislation deals specifically with the Medicare payments for Direct Graduate Medical Education—also known as DGME.

I am pleased that Congressman RON LEWIS from Kentucky's Second District is the lead sponsor of a companion bill already introduced in the House of Representatives.

Medicare pays teaching hospitals for its share of the cost of training new physicians. These payments are known as DGME payments. Teaching hospitals initially reported their direct costs to the Department of Health and Human Services in the mid-1980s. These reported amounts are now the basis for which each teaching hospital is reimbursed.

Unfortunately, there was a disparity in the types of costs each hospital reported, which has lead to large disparities in payments between hospitals. Hospitals are also being reimbursed on data that is 20 years old, at this point.

To help rectify this problem, in 1999 Congress established a floor for calculating Medicare payments for DGME at 70 percent of the national average. In 2001, Congress raised the floor to 85 percent of the national average.

The legislation I am introducing today would bring all of Medicare's DGME hospitals up 100 percent of the national average. This is an important change that would help many teaching hospitals in Kentucky and across the Nation be fairly reimbursed for training our young doctors.

For example, there are 19 hospitals in Kentucky that currently receive reimbursements below the national average. This means that Kentucky hospitals lose more than two million a year because of the lower reimbursement rate. Across the country, there are about 600 hospitals being reimbursed below the national average.

This legislation takes an important step to ensure that Medicare's payment policy for teaching hospitals are fair and that these institutions can continue to do the important work they do. I hope my colleagues will take a close look at the bill and can support it.

By Mr. PRYOR (for himself, Mr. WARNER, and Mr. TALENT):

S. 2290. A bill to provide for affordable natural gas by rebalancing domestic supply and demand and to promote the production of natural gas from domestic resources; to the Committee on Energy and Natural Resources.

Mr. WARNER. Mr. President, I am privileged to rise with the distinguished Senator from Arkansas to introduce a bill today entitled the Reliable and Affordable Natural Gas Energy Reform Act of 2006

In September of 2005, at the time the Senate was examining a number of energy proposals under the distinguished chairmanship of Senator DOMENICI, I introduced a bill at that time quite similar to this one, although it included oil. This measure sticks to gas, and gas only, to enable the several States across our Nation to take such steps under State law, in combination with the Governors and the respective legislatures of the several States that desire to explore and the desire to drill for energy off their shores. That bill as yet is still on the docket.

Since that time I have had the great pleasure of joining my colleague from Arkansas to put this bill in. I am delighted that he indicated he would like to step forward and take the lead. I readily accede to that request.

So much of the concern about drilling offshore is understandably in—and I am not here to criticize—the environmental community. I think my colleague from Arkansas can help me eventually convince the environmental community that the time has come for offshore drilling.

Two things have occurred in the interim between the 1988 moratorium, namely advancement in technology so we can safely, by engineering, put the wells in; and the second is the ever-tightening noose around the citizens of the United States of America with regard to their energy sources. The third thing that is occurring is the growing competition for energy worldwide—India coming on with enormous consumption requirements, and China with even larger consumption requirements.

I think the time has come that the Congress begin to reexamine its old policies with regard to those lands offshore of our several States.

At this time, I yield the floor to my colleague from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, as the distinguished Senator from Virginia acknowledged, we have a problem when it comes to the high cost of natural gas. We feel strongly that this bill which we are cosponsoring can be part of the solution.

About one-quarter of all natural gas is used to produce electricity, but the rest is used to manufacture plastics that go into things such as cars, computers, and medical equipment. Fertilizer and pharmaceutical production is highly dependent on natural gas. In fact, for nitrogen fertilizer, a total of 93 percent of the production cost of that fertilizer is the component of natural gas.

The price of natural gas—which, by the way, is one-quarter of the energy of this country—has more than doubled in the past year and it is anticipated that over the next 20 years you will see a 40-percent increase for the usage and need of natural gas in the United States.

Another thing about natural gas that makes it very different than oil is natural gas is not easy to ship across oceans. Certainly there is some liquid natural gas technology out there, but a vast majority—all but a tiny fraction of the natural gas we use in this country—comes from United States wells, or comes out of Canada. We have a great reserve of natural gas, not only in the Continental United States, not only in Alaska, but also off our shores. Most notably, the one that most people are aware of is in the Gulf of Mexico.

Our legislation will allow the Secretary of the Interior to offer natural gas leases as part of the Outer Continental Shelf leasing program.

Let me say this: As Senator WARNER of Virginia said a few moments ago, we are referring only to natural gas. We have been very careful to make sure this bill does not include petroleum or oil.

I hope no one will be confused by an earlier draft because we included some references to oil, but we have very carefully taken all of those out of the bill. I think the bill is very clear on that point now, that this refers only to natural gas supply and exploration.

Mr. WARNER. Mr. President, will the Senator yield for a moment on that point?

Mr. PRYOR. Yes.

Mr. WARNER. Mr. President, we earlier distributed material which referred to oil which was in an earlier draft. I have been in contact with the environmental community, and so forth. It is clear to me at this point in time that we have in this bill just gas. My fervent hope and belief is that the environmental community will see the advancements in technology and the tremendous requirements of this country for natural gas, that we can restrict it to gas.

At a later time, if we are successful in proving that the natural gas can be drawn and is safe, which I am confident we can do, maybe due to world circumstances and domestic circumstances we could go back at that time and revisit the issue of oil.

I thank the Senator.

Mr. PRYOR. I thank the Senator.

Mr. President, another very important point, which is the essence of this legislation, goes to the moratorium on exploration of the Outer Continental Shelf. This bill allows that moratorium

to stay in place until the year 2012. It allows coastal States to, either out of that moratorium, if they so choose, or if after that moratorium expires, to opt into continuing that moratorium. It gives States, legislatures, Governors, State officials, elected officials, et cetera, the ability to control some of the things that are going on on their coastlines.

I think that is a very important point here because this could be a good revenue source for these States. It could be a good economic boom to some of these States. Certainly we have included revenue sharing, which I think is important to make this work.

I am very pleased that Senator WARNER and I have been able to work together and come up with what we think is a very commonsense solution, or at least part of a solution, to a very serious problem our country is facing.

Arkansas farmers—and I am sure it is true with most other States' farmers as well—had a difficult and disastrous year last year when it came to agriculture. One of the main reasons it has been so hard is their costs have gone up—the high cost of fertilizer and fuel. They use a lot of natural gas when it comes to drying grain, et cetera. The high cost of energy is killing our farmers, and it is certainly hurting our manufacturing sector as well.

The high price of natural gas is bad for the economy, but it is also bad for our energy security. That is one thing which I don't think we can overemphasize here today. I think it is critical that we have a high level of energy security for this country. I am proud to join my very distinguished colleague from Virginia to do our very best to offer a solution to help American families and help American businesses.

I yield the floor.

Mr. WARNER. Mr. President, our committee, under the leadership of Senator DOMENICI, is putting forward a proposal. I spoke with him today. This bill does not, in my judgment—and I hope he concurs eventually—conflict in any way with the objectives he is trying to achieve. He is a man who thinks forwardly and is so knowledgeable on the question of energy, the domestic situation here and the worldwide implication, and I think eventually he will be looking at something, and this may be a vehicle on which the Energy Committee will focus as they take the next step and begin to recognize the need to have some offshore drilling.

I thank my colleague on the Energy Committee.

I conclude my remarks by saying I am proud of the State of Virginia and its legislature. In the last session of the Virginia State legislature in the year 2005, both houses passed legislation authorizing precisely what we have here. In other words, let us go out and take a look at the shelf, find out what may or may not be off the coast of Virginia, and determine the accessibility and the feasibility and interest among industry to come and participate in the drilling.

But, unfortunately our former Governor—and I get along very well with Governor Warner—for reasons which he expressed, felt at this time the legislation shouldn't go forward in this session of the Virginia General Assembly. Again, the Senate stepped forward and passed legislation along the lines of what the General Assembly of Virginia did last year. It is my hope the House will do likewise, and that our new Governor, Governor Kaine, will take it under consideration, should both houses act—and hopefully they will act upon it favorably. Virginia is in a key location, and its citizens could benefit enormously if in fact earlier analysis of the shelf off of our State is confirmed as possessing resources of energy, namely natural gas.

I thank my colleague from Arkansas. He is a marvelous working partner. I look forward to working with him.

I yield the floor.

By Mr. KENNEDY (for himself, Mr. DODD, Mr. HARKIN, and Mr. BINGAMAN):

S. 2291. A bill to provide for the establishment of a biodefense injury compensation program and to provide indemnification for producers of countermeasures; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today to join Senator KENNEDY in introducing a bill, the Responsible Public Readiness and Emergency Preparedness Act, that will correct a grievous mistake made by some of my Republican colleagues. Our legislation will take responsible steps to protect the American people from one of the greatest threats facing our nation—a pandemic flu, bioterror attack or infectious disease outbreak.

Congress should have no higher priority than protecting the safety, security, and health of the American people. Public health experts have warned that a severe avian flu epidemic could lead to worldwide panic, cost millions of lives, and result in untold economic damage.

In order to prevent these dire projections from becoming a reality, we have no choice but to be prepared for such an event. One of the indispensable components of a biodefense plan is the availability of safe and effective vaccines and medicines. To achieve this goal, a biodefense plan must have two critical components. First, it must encourage drug companies to develop and manufacture effective medicines to counteract a disease or flu. Second, it must encourage first responders, health care workers, and ordinary citizens to take those medicines before, during, or after an attack or outbreak.

In December of last year, some of my Republican colleagues inserted language that contained neither of these critical components into the Department of Defense Appropriations conference report. This was done at the last minute, in the middle of the night, without the opportunity for discussion and debate, and without the knowledge or consent of many of the conferees.

Unfortunately, this Republican plan will do nothing to protect the American people. Rather than encouraging companies to make safe and effective medicines, it will provide a perverse incentive by protecting those companies that make ineffective or harmful products. And rather than encouraging Americans to be vaccinated or take a needed medication, it will discourage them from doing so by failing to provide guaranteed care for the few who will inevitably be injured by these products. Make no mistake about it; this plan will fail to protect our Nation.

I say this with confidence because we have been down this path before. Three years ago, the Bush administration launched a program to inoculate millions of first responders against smallpox. Ignoring public health experts, the administration failed to establish a compensation program to provide help to those injured by the vaccine. Doctors, nurses, firefighters and other first responders who would be on the front lines in the event of a smallpox attack by terrorists were not willing to roll the dice and risk the future of their families without compensation for their losses if they were injured, disabled, or even killed by its side effects. Most refused to participate, and the program was a failure.

On November 9 of last year, while testifying before the Senate Foreign Relations Committee, Dr. Julie Gerberding, the Director of the Centers for Disease Control and Prevention (CDC), was asked about the expected success of a biodefense plan that does not include fair compensation to people injured by the very medicines they thought would help them. She responded: ''Well, I certainly feel that from the standpoint of the smallpox vaccination program, that the absence of a compensation program that was acceptable to the people we were hoping to vaccinate was a major barrier—and I think we've learned some lessons from that.''

On November 20 of last year, while appearing on NBC's Meet the Press, Secretary of Health and Human Services Mike Leavitt said that along with limits on liability, ''adequate compensation . . . needs to be made for those who are hurt.''

Many groups representing the public health community and first responders, including the American Public Health Association, the American Nurses Association, and the American Federation of State, County, and Municipal Employees, have been outspoken about the need for a compensation program.

Yet despite our past experience, despite the position taken by those at high levels in the administration, and despite the warnings of those who would be on the front lines in the event of an outbreak, the Republican leadership in Congress included language in

the Defense Appropriations conference report that repeats the mistakes of the past, and endangers American lives. If and when we have a vaccine to protect against a pandemic flu, we must provide first responders with a reasonable assurance that it will be as safe as can reasonably be expected, and that they and their families will be taken care of should they be injured. This plan does not provide that assurance, and once again, first responders will refuse to participate.

Those who inserted this provision into the Conference Report during late night backroom negotiations claim that it includes compensation. But make no mistake—there is no guaranteed compensation in this bill. There is a provision to set up a compensation fund, but there is absolutely no guarantee that this fund will ever see a penny. The authors of this provision are claiming to take care of the injured, without providing any guarantee that it will ever happen. They are making an empty promise.

Not only will this plan fail to compensate those first responders and ordinary citizens injured or even killed by a vaccine, but it will also protect manufacturers even when they act with disregard for the safety of their products. This is an incredibly dangerous and inappropriate incentive. We should be encouraging manufacturers to make safe products, not protecting them when they make products that harm the American people.

Let me make it perfectly clear that I am not against the idea of providing limited liability protection for manufacturers in order to encourage the development of vaccines and medicines to protect the American people in the event of an outbreak or bioterror attack. But such liability protection must adhere to certain principles. First, it must not protect manufacturers that act with careless disregard for the safety and effectiveness of their product. And second, because even the safest vaccine will harm a small percentage of the people who take it, liability protection must be coupled with an adequate compensation program so that injured patients are properly cared for and not left destitute.

The legislation that Senator KENNEDY and I are introducing today adheres to these principles. It repeals the Republican provision passed in December, and replaces it with tried-and-true solutions that will encourage the production of vaccines and drugs without leaving patients to fend for themselves if they are injured. Our legislation will ensure that the reputable and responsible manufacturers of needed medicines—and the doctors, nurses, and hospitals who administer them in good faith—will be protected from frivolous lawsuits that might deter them from making and administering such medicines. But those injured by these medicines will be justly compensated for their injuries.

Congress has adopted this type of solution in the past. The compensation program established by our bill is modeled on one of those past successes—the Vaccine Injury Compensation Program (VICP). The VICP has successfully incentivized the manufacturers of recommended childhood vaccines, encouraged families to have their children vaccinated, and compensated those who are injured.

Senator KENNEDY and I spent several months last year negotiating with Senator ENZI, Senator BURR, Senator GREGG, Senator FRIST, and others on the Health, Education, Labor, and Pensions Committee to try to reach a bipartisan compromise on this issue. We made several proposals, modeled on past Congressional action, to protect manufacturers from frivolous lawsuits while providing fair and adequate compensation to those who are injured.

Unfortunately, the decision was made to forego this bipartisan process. Instead, a non-germane provision was inserted into a massive appropriations bill in the final hours of last session of Congress. Furthermore, it is my understanding that this language was inserted after members had signed the Conference Report, some doing so with the understanding that this language was not included. I am disturbed and disappointed by this blatant abuse of power and disregard for Senate procedures. I can only assume that the supporters of this provision used this tactic because they knew that their plan would not stand up to public scrutiny and Senate debate.

I am confident that if the Senate were to consider this issue carefully, we would choose to reject the failed policies of the past, and enact a policy that really protects the American people—a biodefense program that encourages manufacturers to make safe and effective vaccines and medicines, and provides compensation to those individuals who are injured by those vaccines and medicines.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2291

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE,

This Act may be cited as the ''Responsible Public Readiness and Emergency Preparedness Act''.

SEC. 2. REPEAL.

The Public Readiness and Emergency Preparedness Act (division C of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Public Law 109-148)) is repealed.

SEC. 3. NATIONAL BIODEFENSE INJURY COMPENSATION PROGRAM.

(a) ESTABLISHMENT.—Section 224 of the Public Health Service Act (42 U.S.C. 233) is amended by adding at the end the following:

''(q) BIODEFENSE INJURY COMPENSATION PROGRAM.—

''(1) ESTABLISHMENT.—There is established the Biodefense Injury Compensation Program (referred to in this subsection as the 'Compensation Program') under which compensation may be paid for death or any injury, illness, disability, or condition that is likely (based on best available evidence) to have been caused by the administration of a covered countermeasure to an individual pursuant to a declaration under subsection (p)(2).

''(2) ADMINISTRATION AND INTERPRETATION.—The statutory provisions governing the Compensation Program shall be administered and interpreted in consideration of the program goals described in paragraph (4)(B)(iii).

''(3) PROCEDURES AND STANDARDS.—The Secretary shall by regulation establish procedures and standards applicable to the Compensation Program that follow the procedures and standards applicable under the National Vaccine Injury Compensation Program established under section 2110, except that the regulations promulgated under this paragraph shall permit a person claiming injury or death related to the administration of any covered countermeasure to file either—

''(A) a civil action for relief under subsection (p); or

''(B) a petition for compensation under this subsection.

''(4) INJURY TABLE.—

''(A) INCLUSION.—For purposes of receiving compensation under the Compensation Program with respect to a countermeasure that is the subject of a declaration under subsection (p)(2), the Vaccine Injury Table under section 2114 shall be deemed to include death and the injuries, disabilities, illnesses, and conditions specified by the Secretary under subparagraph (B)(ii).

''(B) INJURIES, DISABILITIES, ILLNESSES, AND CONDITIONS.—

''(i) INSTITUTE OF MEDICINE.—Not later than 30 days after making a declaration described in subsection (p)(2), the Secretary shall enter into a contract with the Institute of Medicine, under which the Institute shall, within 180 days of the date on which the contract is entered into, and periodically thereafter as new information, including information derived from the monitoring of those who were administered the countermeasure, becomes available, provide its expert recommendations on the injuries, disabilities, illnesses, and conditions whose occurrence in one or more individuals are likely (based on best available evidence) to have been caused by the administration of a countermeasure that is the subject of the declaration.

''(ii) SPECIFICATION BY SECRETARY.—Not later than 30 days after the receipt of the expert recommendations described in clause (i), the Secretary shall, based on such recommendations, specify those injuries, disabilities, illnesses, and conditions deemed to be included in the Vaccine Injury Table under section 2114 for the purposes described in subparagraph (A).

''(iii) PROGRAM GOALS.—The Institute of Medicine, under the contract under clause (i), shall make such recommendations, the Secretary shall specify, under clause (ii), such injuries, disabilities, illnesses, and conditions, and claims under the Compensation Program under this subsection shall be processed and decided taking into account the following goals of such program:

''(I) To encourage persons to develop, manufacture, and distribute countermeasures, and to administer covered countermeasures to individuals, by limiting such persons' liability for damages related to death and such injuries, disabilities, illnesses, and conditions.

''(II) To encourage individuals to consent to the administration of a covered countermeasure by providing adequate and just compensation for damages related to death and such injuries, disabilities, illnesses, or conditions.

''(III) To provide individuals seeking compensation for damages related to the administration of a countermeasure with a non-adversarial administrative process for obtaining adequate and just compensation.

''(iv) USE OF BEST AVAILABLE EVIDENCE.—The Institute of Medicine, under the contract under clause (i), shall make such recommendations, the Secretary shall specify, under clause (ii), such injuries, disabilities, illnesses, and conditions, and claims under the Compensation Program under this subsection shall be processed and decided using the best available evidence, including information from adverse event reporting or other monitoring of those individuals who were administered the countermeasure, whether evidence from clinical trials or other scientific studies in humans is available.

''(v) APPLICATION OF SECTION 2115.—With respect to section 2115(a)(2) as applied for purposes of this subsection, an award for the estate of the deceased shall be—

''(I) if the deceased was under the age of 18, an amount equal to the amount that may be paid to a survivor or survivors as death benefits under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.); or

''(II) if the deceased was 18 years of age or older, the greater of—

''(aa) the amount described in subclause (I); or

''(bb) the projected loss of employment income, except that the amount under this item may not exceed an amount equal to 400 percent of the amount that applies under item (aa).

''(vi) APPLICATION OF SECTION 2116.—Section 2116(b) shall apply to injuries, disabilities, illnesses, and conditions initially specified or revised by the Secretary under clause (ii), except that the exceptions contained in paragraphs (1) and (2) of such section shall not apply.

''(C) RULE OF CONSTRUCTION.—Section 13632 (a)(3) of Public Law 103–66 (107 Stat. 646) (making revisions by Secretary to the Vaccine Injury Table effective on the effective date of a corresponding tax) shall not be construed to apply to any revision to the Vaccine Injury Table made under regulations under this paragraph.

''(5) APPLICATION.—The Compensation Program applies to any death or injury, illness, disability, or condition that is likely (based on best available evidence) to have been caused by the administration of a covered countermeasure to an individual pursuant to a declaration under subsection (p)(2).

''(6) SPECIAL MASTERS.—

''(A) HIRING.—In accordance with section 2112, the judges of the United States Claims Court shall appoint a sufficient number of special masters to address claims for compensation under this subsection.

''(B) BUDGET AUTHORITY.—There are appropriated to carry out this subsection such sums as may be necessary for fiscal year 2006 and each fiscal year thereafter. This subparagraph constitutes budget authority in advance of appropriations and represents the obligation of the Federal Government.

''(7) COVERED COUNTERMEASURE.—For purposes of this subsection, the term 'covered countermeasure' has the meaning given to such term in subsection (p)(7)(A).

''(8) FUNDING.—Compensation made under the Compensation Program shall be made from the same source of funds as payments made under subsection (p).''.

(b) EFFECTIVE DATE.—This section shall take effect as of November 25, 2002 (the date of enactment of the Homeland Security Act of 2002 (Pub. L. 107–296; 116 Stat. 2135)).

SEC. 4. INDEMNIFICATION FOR MANUFACTURERS AND HEALTH CARE PROFESSIONALS WHO ADMINISTER MEDICAL PRODUCTS NEEDED FOR BIODEFENSE.

Section 224(p) of the Public Health Service Act (42 U.S.C. 233(p)) is amended—

(1) in the subsection heading by striking ''SMALLPOX'';

(2) in paragraph (1), by striking ''against smallpox'';

(3) in paragraph (2)—

(A) in the paragraph heading, by striking ''AGAINST SMALLPOX''; and

(B) in subparagraph (B), by striking clause (ii);

(4) by striking paragraph (3) and inserting the following:

''(3) EXCLUSIVITY; OFFSET.—

''(A) EXCLUSIVITY.—With respect to an individual to which this subsection applies, such individual may bring a claim for relief under—

''(i) this subsection;

''(ii) subsection (q); or

''(iii) part C.

''(B) ELECTION OF ALTERNATIVES.—An individual may only pursue one remedy under subparagraph (A) at any one time based on the same incident or series of incidents. An individual who elects to pursue the remedy under subsection (q) or part C may decline any compensation awarded with respect to such remedy and subsequently pursue the remedy provided for under this subsection. An individual who elects to pursue the remedy provided for under this subsection may not subsequently pursue the remedy provided for under subsection (q) or part C.

''(C) STATUTE OF LIMITATIONS.—For purposes of determining how much time has lapsed when applying statute of limitations requirements relating to remedies under subparagraph (A), any limitation of time for commencing an action, or filing an application, petition, or claim for such remedies, shall be deemed to have been suspended for the periods during which an individual pursues a remedy under such subparagraph.

''(D) OFFSET.—The value of all compensation and benefits provided under subsection (q) or part C of this title for an incident or series of incidents shall be offset against the amount of an award, compromise, or settlement of money damages in a claim or suit under this subsection based on the same incident or series of incidents.'';

(5) in paragraph (6)—

(A) in subparagraph (A), by inserting ''or under subsection (q) or part C'' after ''under this subsection''; and

(B) by redesignating subparagraph (B) as subparagraph (C);

(C) by inserting after subparagraph (A), the following:

''(B) GROSSLY NEGLIGENT, RECKLESS, OR ILLEGAL CONDUCT AND WILLFUL MISCONDUCT.—For purposes of subparagraph (A), grossly negligent, reckless, or illegal conduct or willful misconduct shall include the administration by a qualified person of a covered countermeasure to an individual who was not within a category of individuals covered by a declaration under subsection (p)(2) with respect to such countermeasure where the qualified person fails to have had reasonable grounds to believe such individual was within such a category.''; and

(D) by adding at the end the following:

''(D) LIABILITY OF THE UNITED STATES.—The United States shall be liable under this subsection with respect to a claim arising out of the manufacture, distribution, or administration of a covered countermeasure regardless of whether—

''(i) the cause of action seeking compensation is alleged as negligence, strict liability, breach of warranty, failure to warn, or other action; or

''(ii) the covered countermeasure is designated as a qualified anti-terrorism technology under the SAFETY Act (6 U.S.C. 441 et seq.).

''(E) GOVERNING LAW.—Notwithstanding the provisions of section 1346(b)(1) and chapter 171 of title 28, United States Code, as they relate to governing law, the liability of the United States as provided in this subsection shall be in accordance with the law of the place of injury.

''(F) MILITARY PERSONNEL AND UNITED STATES CITIZENS OVERSEAS.—

''(i) MILITARY PERSONNEL.—The liability of the United States as provided in this subsection shall extend to claims brought by United States military personnel.

''(ii) CLAIMS ARISING IN A FOREIGN COUNTRY.—Notwithstanding the provisions of section 2680(k) of title 28, United States Code, the liability of the United States as provided for in the subsection shall extend to claims based on injuries arising in a foreign country where the injured party is a member of the United States military, is the spouse or child of a member of the United States military, or is a United States citizen.

''(iii) GOVERNING LAW.—With regard to all claims brought under clause (ii), and notwithstanding the provisions of section 1346(b)(1) and chapter 171 of title 28, United States Code, and of subparagraph (C), as they relate to governing law, the liability of the United States as provided in this subsection shall be in accordance with the law of the claimant's domicile in the United States or most recent domicile with the United States.''; and

(6) in paragraph (7)—

(A) by striking subparagraph (A) and inserting the following:

''(A) COVERED COUNTERMEASURE.—The term 'covered countermeasure', means—

''(i) a substance that is—

''(I)(aa) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

''(bb) vaccinia immune globulin used to control or treat the adverse effects of vaccinia inoculation; and

''(II) specified in a declaration under paragraph (2); or

''(ii) a drug (as such term is defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act), biological product (as such term is defined in section 351(i) of this Act), or device (as such term is defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) that—

''(I) the Secretary determines to be a priority (consistent with sections 302(2) and 304(a) of the Homeland Security Act of 2002) to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent identified as a material threat under section 319F–2(c)(2)(A)(ii), or to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent;

''(II) is—

''(aa) authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act, so long as the manufacturer of such drug, biological product, or device has—

''(AA) made all reasonable efforts to obtain applicable approval, clearance, or licensure; and

''(BB) cooperated fully with the requirements of the Secretary under such section 564; or

''(bb) approved or licensed solely pursuant to the regulations under subpart I of part 314 or under subpart H of part 601 of title 21, Code of Federal Regulations (as in effect on the date of enactment of the National Biodefense Act of 2005); and

''(III) is specified in a declaration under paragraph (2).''; and

(B) in subparagraph (B)—

(i) by striking clause (ii), and inserting the following:

''(ii) a health care entity, a State, or a political subdivision of a State under whose auspices such countermeasure was administered;'' and

(vi) in clause (viii), by inserting before the period ''if such individual performs a function for which a person described in clause (i), (ii), or (iv) is a covered person''.

By Mr. SPECTER (for himself, Mr. LEAHY, Mr. CORNYN, Mr. CHAMBLISS, and Mrs. FEINSTEIN):

S. 2292. A bill to provide relief for the Federal judiciary from excessive rent charges; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I seek recognition to speak in support of legislation, cosponsored by Senators LEAHY, CORNYN, CHAMBLISS, and FEINSTEIN, which I am introducing today to address a major problem affecting the Federal judiciary, specifically excessive rental charges by the General Services Administration for courthouses and other space occupied by the courts across the country. This legislation would prohibit the GSA from charging the Federal judiciary rent in excess of the actual costs incurred by GSA to maintain and operate Federal court buildings and related costs.

Unlike many other elements of the Federal Government, the judiciary is required to pay a large and ever-increasing portion of its budget as rent to another branch of government, the GSA. In fiscal terms, since 1986, the Federal courts' rental payments to GSA have increased from $133 million to $926 million in fiscal year 2005. This rental payment represents an increasing slice of the judiciary's relatively small overall budget. The percentage of the judiciary's operating budget devoted to rent payments has escalated from 15.7 percent in fiscal year 1986 to 22 percent in fiscal year 2005. By contrast, only three percent of the Department of Justice budget goes toward GSA rent, and the Executive Branch as a whole spends less than two-tenths of one percent of its budget on GSA rent.

In his 2005 Year-End report on the Federal Judiciary, Chief Justice John Roberts cited escalating GSA rents as one of the two serious threats to the independence of the Federal judiciary, the other being judges' pay. The increased rents, coupled with across-the-board cuts imposed during fiscal years 2004 and 2005, resulted in a reduction of approximately 1,500 judicial branch employees as of mid-December when compared to October 2003, and a 24-month moratorium on courthouse construction has been imposed.

On May 13, 2005, a bipartisan group of 11 Senators on the Judiciary Committee wrote to Stephen A. Perry, Administrator of GSA, to exercise his statutory authority to exempt the judiciary from rental payments in excess of those required to operating and maintaining Federal court buildings and related costs. On May 31, 2005, Mr. Perry wrote back and denied this sensible request. Mr. Perry referred to the judiciary as ''one of our largest and most valued tenants,'' but a more apt description would have been one of its most valued profit centers.

The judiciary paid $926 million to GSA in fiscal year 2005, but GSA's actual cost of providing space to the judiciary was only $426 million, a difference of $500 million. The judiciary in essence is being used as a profit center by GSA, which accomplishes this by charging for such fictitious costs as real estate tax which GSA does not in fact pay and forcing the judiciary to pay for buildings that have been fully amortized, not only once but several times.

This legislation provides a relatively modest and simple fix to this near crisis in the Federal judiciary, and I urge my colleagues to support it.

By Mr. ALLEN:

S.J. Res. 31. A joint resolution proposing an amendment to the Constitution of the United States relative to require a balancing of the budget; to the Committee on the Judiciary.

Mr. ALLEN. Madam President, I rise to speak on a resolution regarding a constitutional amendment I am introducing today. It is the third part of my three-point plan to restore fiscal accountability and common sense to Washington. It is a resolution, in particular, to amend the Constitution to require a balanced Federal budget.

The continued growth in Government, coupled with our enormous deficit, make a balanced budget amendment a vital tool for bringing this fiscal house back in order and restraining the growing appetite of the Federal Government to take more money from the people in taxes, and this is money that is coming from families, working people, from men and women who run their own small businesses; and also when the Federal Government is taking more money, it means they can be meddling in more things that are best left to the people or the States—if Government needs to be involved at all.

The Federal Government ought to be paying attention and be focused on its key reasons for being created in the first place by the people in the States, and that is national defense—making sure the military is strong and that they have the most advanced equipment and armament for our men and women in uniform as they secure our freedom. We need a national missile defense system. Those are the sorts of things that are the primary responsibility of the Federal Government, as well as key research areas, whether it is in nanotechnology, aeronautics, or in other areas working with not just Federal agencies but the private sector and our colleges and universities.

As this Senate gets to work on the fiscal year 2007 budget, our country's fiscal discipline and accountability must be improved. We have a budget deficit not because the Federal Government has a revenue problem; it is because the Federal Government has a spending problem. The Government doesn't tax too little, it spends too much. We must focus our efforts on spending the people's money much smarter, not taking more of their money because it is convenient or expedient.

Now, to control spending, I have revived a pair of ideas that Ronald Reagan advocated when he was President. In Ronald Reagan's farewell address to the American people, he said there were two things he wished he had accomplished as President, and what he wanted future Presidents, both Republican and Democrat, to have. They were the line-item veto and a constitutional amendment to balance the budget.

As always, and so often, Ronald Reagan was right. That is why I have made the line-item veto and the balanced budget amendment the first two points of my three-point plan to bring fiscal accountability and responsibility to Washington.

Let's start first with the line-item veto. When I was honored by the people of Virginia as Governor of the Commonwealth of Virginia, I had the power of the line-item veto. I used it 17 times. I saw how useful a tool that was as Governor to knock out undesirable, nonessential spending, or untoward or undesirable policies. It is a power—the line-item veto—or an authority that actually 46 Governors in the U.S. enjoy. It is a very powerful tool to cut wasteful spending and undesirable programs. In fact, after you use it a few times, you don't have to use it as much, because the legislative branch understands that, gosh, he actually is going to use that power, and when it comes to the final budget or appropriations bills, the undesirable or wasteful programs or spending are not in it.

The President of the United States, in my view, should have the same power I had as Governor of Virginia, and that is the line-item veto. Together with Senator JIM TALENT of Missouri, last September we introduced a constitutional amendment to provide the President with line-item veto authority. It is high time for that. The reason we need a constitutional amendment is that there were times when we were trying do it statutorily. I would be in favor of statutory methods, rather than an amendment, but the Supreme Court struck down the last effort. I think the President, as well as the Congress, ought to be accountable for some of these spending items that create such controversy and are absurd or wasteful. By the way, we need to vote on this. If this goes to the States, I have no question that the States will

quickly ratify such a constitutional amendment because, after all, they give their Governors such power.

Secondly, we need a balanced budget amendment. This is something many States have, the Commonwealth of Virginia, and virtually the rest of the States. One of the best ways, in my view, to eliminate the Federal deficit and limit the size and scope of the Government is to wrestle it down with the chains of the Constitution.

I would also add that balancing the budget is not just a matter of making sure that expenditures are equal to revenue; it is about making sure the Federal Government fulfills its proper, focused, constitutional role—and not expanding into everything that is not necessarily a Federal prerogative, but best left to the people or the States. We all know that a big, bloated Federal Government stifles innovation, saps initiative, and reduces personal responsibility.

The third part of my plan is a proposal I offered last week, which I know won't be all that popular in this Chamber, but I think it will be much appreciated and understood by real people in the real world.

I have proposed legislation that provides a powerful incentive for Senators and Congressmen to perform their jobs on time, as people do in the private sector. We have a full-time legislature here and we go into session on January 3. One of our prime responsibilities is to pass appropriations bills before the next fiscal year, which is October 1. But it is, to me, deplorable that full-time legislators cannot get their job done on time by October 1. Then, of course, we end up with continuing resolutions, and several months later, some time after Thanksgiving but before Christmas, all kinds of unknown, unscrutinized spending occurs. It gets passed in the dead of night, thinking nobody will notice what is in all these appropriations bills—and actually a lot of people don't know what is in those appropriations bills.

That is why I want to impose on Congress what I call the ''paycheck penalty.'' The paycheck penalty says to Members of Congress, if you fail to pass all your appropriations measures by the start of the fiscal year, October 1, which is your job, what you are paid to do, your paychecks will be withheld until you complete your job.

Now, taken together, these three measures will eliminate the need to raise taxes to eliminate the deficit. The tax reductions enacted in the last 5 years have helped our country get out of recession. It has incented more investment, created many new jobs—in fact, 4.5 million new jobs—in the private sector; thereby, from all this economic growth and prosperity and more people working in businesses, large, medium, and small doing better, tax receipts to the Government have increased. To illustrate the point, from 2004 to 2005, tax receipts to the Federal Government grew at a rate of 14.5 percent, or $274 billion. This growth is more than twice the rate of economic growth. So the economic growth is strong, but the tax revenues are twice as much to the Federal Government. To further this point, the President's budget forecasts that tax revenues will grow an additional 6.1 percent, or $132 billion, from 2005 to 2006.

From the tax cuts of the Reagan administration to the tax cuts we passed in this new century, the fact is that lower taxes stimulate economic growth, stimulate job creation, and stimulate expansion, which in turn increases revenues to the Federal Government. More important, low taxes make this country more competitive for investment and jobs here, rather than people going to invest in places such as China or elsewhere in the world. When people are able to keep more of what they earn, they spend it, save it, invest it, they may expand their business, and they may get more innovative capital equipment, and the fact is lower taxes make this country more competitive and people more prosperous.

The opportunity created by Americans spending the fruits of their own labor, as opposed to the Government, is the path to bringing fiscal sanity to the Federal budget. So to avoid future pressure for counterproductive, harmful tax increases, and to achieve a balanced budget, we must make these dramatic changes in how the Federal Government spends the taxpayers' money: the line-item veto, balanced budget amendment, and the paycheck penalty for Members of Congress who have not done their jobs on time.

As we closed 2005, Madam President, the Federal Government was responsible for a gross Federal debt of $8.2 trillion. One must ask, how did we get here? Consider these statistics from the last 5 years: Federal spending has increased 33 percent. In 2005, the per-household spending by our Government has grown to $21,878 per year. That figure is compared to the per-household tax, on average, of $19,062 per year, leaving an annual per-household deficit of about $2,800. The macro result is an annual budget deficit in the hundreds of billions of dollars.

We are in a time of war, this war on terror, and enormous national disasters have also befallen our country in Louisiana, Alabama, Texas, and in Florida, in the past year. That is why I am introducing this resolution. Even when those occur, this amendment does require the Federal Government to achieve a balanced budget within 5 years of ratification by the States. Each year, the budget deficit would be reduced by 20 percent, until the Federal budget is balanced. This is a phased-in approach, which is realistic and provides needed time for Congress to amend the budget and appropriations processes to provide for a balanced budget. I fully understand that national and global events can significantly affect our country's budgetary needs. Thus, I have included a provision that allows for a waiver in the event of war. However, to ensure deficits resulting from a war do not continue in perpetuity, the provision provides for a 5-year window following the end of the conflict to reduce any deficits that may have accumulated.

Domestic catastrophes can also wreak havoc on the Federal Government's budget, as well as those of the States in Louisiana, Mississippi and, to some extent Florida, which we have recently seen devastated by hurricanes. To address such circumstances, the resolution also includes a provision that would allow expenditures in excess of revenues, provided three-fifths of each House of Congress approves, which I think Congress would have done in these situations if this were in effect last year and presently.

Now the risks of budget deficits and national debt are well known: the collapse of the dollar, a significant reduction in national savings, and the inability to fund programs vital to the Nation's security and well-being. It also means if you are putting in more and more tax revenues to finance the debt, there is less money there for key areas such as national defense, homeland security, education, research in science, and also engineering. So to prevent these events, we need an institutional mechanism to get this overspending under control.

Based on past performance, it will take, of course, a change in the Constitution. To paraphrase Thomas Jefferson, we need to bind the Congress with a change in the Constitution to prevent present Congresses from burdening future generations with perpetual debt.

I believe all of us, if we look at it seriously and responsibly, recognize and grasp the seriousness of this problem. I am hopeful that this Senate will be able to make the difficult choices to make sure that the next generation of Americans is not burdened with overwhelming debt or higher taxes from a burdensome, large Federal Government. A balanced budget amendment to the Constitution, I sincerely believe from my experiences as Governor of the Commonwealth of Virginia, will be a very valuable, useful, and effective tool in making that goal a reality. The same applies to the line-item veto authority for the President. I also believe very strongly that this Senate and the other body, the House, can get the appropriations bills done on time by October 1. If not, I think paychecks ought to be withheld until it is done.

So I hope that my colleagues recognize the seriousness, the importance, and the urgency of these responsible measures, these ideas. These measures include getting our fiscal house in order, protecting the taxpayers from tax increases in the future, and making sure this country is the world capital of innovation. These measures include investment by the private sector, more competitiveness compared to other

countries because of lower taxes, Federal regulatory policies, sound energy policy with more development and exploration here at home, as well as using clean coal and advanced nuclear and biofuels and new technologies. We also must make sure our fiscal house is in order for Americans to compete and succeed in the future.

I urge my colleagues to consider this resolution and join me in this effort for America's future.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2889. Mr. FRIST (for Mr. SPECTER) proposed an amendment to the bill H.R. 32, to amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

SA 2890. Mr. FRIST (for Ms. COLLINS) proposed an amendment to the bill S. 1777, to provide relief for the victims of Hurricane Katrina.

TEXT OF AMENDMENTS

SA 2889. Mr. FRIST (for Mr. SPECTER) proposed an amendment to the bill H.R. 32, to amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. TRAFFICKING IN COUNTERFEIT MARKS.

(a) SHORT TITLE; FINDINGS.—

(1) SHORT TITLE.—This section may be cited as the ''Stop Counterfeiting in Manufactured Goods Act''.

(2) FINDINGS.—The Congress finds that—

(A) the United States economy is losing millions of dollars in tax revenue and tens of thousands of jobs because of the manufacture, distribution, and sale of counterfeit goods;

(B) the Bureau of Customs and Border Protection estimates that counterfeiting costs the United States $200 billion annually;

(C) counterfeit automobile parts, including brake pads, cost the auto industry alone billions of dollars in lost sales each year;

(D) counterfeit products have invaded numerous industries, including those producing auto parts, electrical appliances, medicines, tools, toys, office equipment, clothing, and many other products;

(E) ties have been established between counterfeiting and terrorist organizations that use the sale of counterfeit goods to raise and launder money;

(F) ongoing counterfeiting of manufactured goods poses a widespread threat to public health and safety; and

(G) strong domestic criminal remedies against counterfeiting will permit the United States to seek stronger anticounterfeiting provisions in bilateral and international agreements with trading partners.

(b) TRAFFICKING IN COUNTERFEIT MARKS.—Section 2320 of title 18, United States Code, is amended as follows:

(1) Subsection (a) is amended by inserting after ''such goods or services'' the following: '', or intentionally traffics or attempts to traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive,''.

(2) Subsection (b) is amended to read as follows:

''(b)(1) The following property shall be subject to forfeiture to the United States and no property right shall exist in such property:

''(A) Any article bearing or consisting of a counterfeit mark used in committing a violation of subsection (a).

''(B) Any property used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a).

''(2) The provisions of chapter 46 of this title relating to civil forfeitures, including section 983 of this title, shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States, shall order that any forfeited article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law.

''(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States—

''(i) any property constituting or derived from any proceeds the person obtained, directly or indirectly, as the result of the offense;

''(ii) any of the person's property used, or intended to be used, in any manner or part, to commit, facilitate, aid, or abet the commission of the offense; and

''(iii) any article that bears or consists of a counterfeit mark used in committing the offense.

''(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. Notwithstanding section 413(h) of that Act, at the conclusion of the forfeiture proceedings, the court shall order that any forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed.

''(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the mark and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).

''(5) The term 'victim', as used in paragraph (4), has the meaning given that term in section 3663A(a)(2).''.

(3) Subsection (e)(1) is amended—

(A) by striking subparagraph (A) and inserting the following:

''(A) a spurious mark—

''(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature;

''(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

''(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services for which the mark is registered in the United States Patent and Trademark Office; and

''(iv) the use of which is likely to cause confusion, to cause mistake, or to deceive; or''; and

(B) by amending the matter following subparagraph (B) to read as follows:

''but such term does not include any mark or designation used in connection with goods or services, or a mark or designation applied to labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature used in connection with such goods or services, of which the manufacturer or producer was, at the time of the manufacture or production in question, authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation.''.

(4) Section 2320 is further amended—

(A) by redesignating subsection (f) as subsection (g); and

(B) by inserting after subsection (e) the following:

''(f) Nothing in this section shall entitle the United States to bring a criminal cause of action under this section for the repackaging of genuine goods or services not intended to deceive or confuse.''.

(c) SENTENCING GUIDELINES.—

(1) REVIEW AND AMENDMENT.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this subsection, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section 2318 or 2320 of title 18, United States Code.

(2) AUTHORIZATION.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

(3) RESPONSIBILITIES OF UNITED STATES SENTENCING COMMISSION.—In carrying out this subsection, the United States Sentencing Commission shall determine whether the definition of ''infringement amount'' set forth in application note 2 of section 2B5.3 of the Federal sentencing guidelines is adequate to address situations in which the defendant has been convicted of one of the offenses listed in paragraph (1) and the item in which the defendant trafficked was not an infringing item but rather was intended to facilitate infringement, such as an anti-circumvention device, or the item in which the defendant trafficked was infringing and also was intended to facilitate infringement in another good or service, such as a counterfeit label, documentation, or packaging, taking into account cases such as U.S. v. Sung, 87 F.3d 194 (7th Cir. 1996).

SEC. 2. TRAFFICKING DEFINED.

(a) SHORT TITLE.—This section may be cited as the ''Protecting American Goods and Services Act of 2005''.

(b) COUNTERFEIT GOODS OR SERVICES.—Section 2320(e) of title 18, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) the term 'traffic' means to transport, transfer, or otherwise dispose of, to another,

for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of;'';

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following:

''(3) the term 'financial gain' includes the receipt, or expected receipt, of anything of value; and''.

(c) CONFORMING AMENDMENTS.—

(1) SOUND RECORDINGS AND MUSIC VIDEOS OF LIVE MUSICAL PERFORMANCES.—Section 2319A(e) of title 18, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) the term 'traffic' has the same meaning as in section 2320(e) of this title.''.

(2) COUNTERFEIT LABELS FOR PHONORECORDS, COMPUTER PROGRAMS, ETC.—Section 2318(b) of title 18, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) the term 'traffic' has the same meaning as in section 2320(e) of this title;''.

(3) ANTI-BOOTLEGGING.—Section 1101 of title 17, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) DEFINITION.—In this section, the term 'traffic' has the same meaning as in section 2320(e) of title 18.''.

SA 2890. Mr. FRIST (for Ms. COLLINS) proposed an amendment to the bill S. 1777, to provide relief for the victims of Hurricane Katrina; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Katrina Emergency Assistance Act of 2005''.

SEC. 2. UNEMPLOYMENT ASSISTANCE.

(a) IN GENERAL.—Notwithstanding section 410 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5177), in providing assistance under that section to individuals unemployed as a result of Hurricane Katrina—

(1) the President shall accept applications for assistance during—

(A) the 90-day period beginning on the date on which the applicable major disaster was declared; or

(B) such longer period as may be established by the President; and

(2) subject to subsection (b), the President shall provide assistance to any unemployed individual, to the extent the individual is not entitled to unemployment compensation under any Federal or State law, until that individual is reemployed in a suitable position.

(b) LIMITATION FOR PERIOD OF ASSISTANCE.—The total amount of assistance payable to an individual under subsection (a) may not exceed payments based on a 39-week period of unemployment.

SEC. 3. REIMBURSEMENT FOR PURCHASES.

(a) DEFINITIONS.—In this section:

(1) DISASTER PERIOD.—The term ''disaster period'' means, with respect to any State that includes an area for which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) as a result of Hurricane Katrina or Hurricane Rita, the period beginning on the earliest date on which any area of the State was so declared and ending on the latest date for which any such declaration of an area of the State terminates.

(2) KATRINA OR RITA SURVIVOR.—The term ''Katrina or Rita Survivor'' means an individual who—

(A) resides in an area for which a major disaster has been declared in accordance with 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) as a result of Hurricane Katrina or Hurricane Rita; or

(B) resided in an area described in subparagraph (A) during the 7 days immediately preceding the date of declaration of a major disaster described in subparagraph (A).

(3) MAJOR DISASTER.—The term ''major disaster'' has the meaning given the term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(b) REIMBURSEMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President may reimburse a community for each purchase of supplies (such as food, personal hygiene products, linens, and clothing) distributed to Katrina or Rita Survivors.

(2) ELIGIBLE PURCHASES.—Reimbursement under paragraph (1) shall be available only with respect to supplies that—

(A) are purchased with taxpayer dollars; and

(B) would otherwise be eligible for reimbursement if purchased by a Katrina or Rita Survivor.

(c) PERIOD OF APPLICABILITY.—This section and the authority provided by this section apply only to a community assisting Katrina or Rita Survivors from a State during the disaster period of the State.

SEC. 4. INTERNATIONAL STUDENTS DISPLACED BY KATRINA.

It is the sense of Congress that the Bureau of Immigration and Customs Enforcement within the Department of Homeland Security should suspend or refrain from initiating removal proceedings for international students and scholars who are deportable solely due to their inability to fulfill the terms of their visas as a result of a national disaster, such as Hurricane Katrina.

SEC. 5. CONTRACTING AUTHORITY.

Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, acting through the Under Secretary for Emergency Preparedness, shall propose new inspection guidelines that prohibit an inspector from entering into a contract with any individual or entity for whom the inspector performs an inspection for purposes of determining eligibility for assistance from the Federal Emergency Management Agency.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will he held on Wednesday, February 28, 2006, at 10 a.m. in Room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to review the proposed fiscal year 2007 Forest Service budget.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Frank Gladics (202–224–2878), Elizabeth Abrams (202–224–0537) or Sara Zecher (202–224–8276) of the Committee staff.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on February 15, 2006, at 9:30 a.m., in open session to consider the following nominations: Honorable Preston M. Geren to be Under Secretary of the Army; Honorable Michael L. Dominguez to be Deputy Under Secretary of Defense for Personnel and Readiness; Mr. James I. Finley to be Deputy Under Secretary of Defense for Acquisition and Technology; and Mr. Thomas P. D'Agostino to be Deputy Administrator for Defense Programs, National Nuclear Security Administration.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on February 15, 2006, at 10 a.m., to conduct a hearing on ''Rebuilding Needs in Katrina-Impacted Areas.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, February 15, 2006, at 10 a.m., on Video Franchising.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, February 15, 2006, at 2:30 p.m., on Nanotechnology.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, February 15 at 10:30 a.m. The purpose of this hearing is to receive testimony regarding S. 2197 to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available

through the Department of Energy, including at the national laboratories.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to hold a business meeting on February 15, 2006 at 9:30 a.m. to consider the following agenda:

Agenda

Nominations: Terrence L. Bracy—Nominee to a position on the Board of Trustees at the Morris K. Udall Scholarship and Excellence in National Environmental Foundation and the following 6 to Members of the Board of Directors of the Tennessee Valley Authority: Dennis C. Bottorff, Robert M. Duncan, Susan Richardson Williams, William B. Sansom, Howard A. Thrailkill, and Donald R. DePriest.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to hold a hearing on February 15, 2006 at 9:35 a.m. to receive testimony on EPA's proposed Budget for FY 2007.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 15, 2006, at 9:45 a.m. to hold a hearing on the President's Budget for Foreign Affairs and a business meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, February 15, 2006, at 11:15 a.m. for a hearing titled, ''Hurricane Katrina: The Homeland Security Department's Preparation and Response.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Judicial Nominations'' on Wednesday, February 15, 2006 at 10 a.m. in the Dirksen Senate Office Building Room 226.

Witness

Panel I: Members of Congress, TBA.

Panel II: Stephen G. Larson to be United States District Judge for the Central District of California; Jack Zouhary to be United States District Judge for the Northern District of Ohio; and John F. Clark to be Director of the United States Marshals Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 15, 2006 at 2:30 p.m. to hold a closed briefing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EMPLOYMENT AND WORKPLACE SAFETY

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Subcommittee on Employment and Workplace Safety, be authorized to hold a hearing during the session of the Senate on Wednesday, February 15 at 10 a.m. in SD–430.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests be authorized to meet during the session of the Senate on Wednesday, February 15 at 2:30 p.m. The purpose of the hearing is to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. FEINGOLD. Mr. President, I ask unanimous consent that floor privileges be granted, during the consideration of S. 2271, H.R. 3199, to Bob Schiff, Lara Flynt, Paul Weinberger, Mary Irvine, and Sumner Slichter.

The PRESIDING OFFICER. Without objection, it is so ordered.

STOP COUNTERFEITING IN MANUFACTURED GOODS ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of H.R. 32 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the bill by title.

The bill clerk read as follows:

A bill (H.R. 32) to amend title 18 United States Code, to provide criminal penalties for trafficking in counterfeit marks.

There being no objection, the Senate proceeded to consider the bill.

Mr. SPECTER. Mr. President, I want to take a moment to speak about H.R. 32, the Stop Counterfeiting in Manufactured Goods Act of 2005, sponsored by Representative KNOLLENBERG and 59 House cosponsors. The counterfeiting of goods bearing American held trademarks is an important problem that I am committed to fighting, as reflected by my sponsoring S. 1699, the Senate companion bill to H.R. 32, earlier this year with Senator LEAHY and Senators ALEXANDER, BAYH, BROWNBACK, COBURN, CORNYN, DEWINE, DURBIN, FEINGOLD, FEINSTEIN, HATCH, KYL, LEVIN, REED, STABENOW, and VOINOVICH.

H.R. 32, the Stop Counterfeiting in Manufactured Goods Act of 2005 addresses a problem that has reached epidemic proportions as a result of a loophole in our criminal code: the trafficking in counterfeit labels. Criminal law currently prohibits the trafficking in counterfeit trademarks ''on or in connection with goods or services.'' However, it does not prohibit the trafficking in the counterfeit marks themselves. As such, there is nothing in current law to prohibit an individual from selling counterfeit labels bearing otherwise protected trademarks within the United States.

This loophole was exposed by the Tenth Circuit Court of Appeals in *United States* v. *Giles*, 213 F.3d 1247 (10th Cir. 2000). In this case, the United States prosecuted the defendant for manufacturing and selling counterfeit Dooney & Bourke labels that third parties could later affix to generic purses. Examining title 18, section 2320, of the United States Code, the Tenth Circuit held that persons who sell counterfeit trademarks that are not actually attached to any ''goods or services'' do not violate the Federal criminal trademark infringement statute. Since the defendant did not attach counterfeit marks to ''goods or services,'' the court found that the defendant did not run afoul of the criminal statute as a matter of law. Thus, someone caught redhanded with counterfeit trademarks walked free.

H.R. 32 closes this loophole by amending title 18, section 2320 of the United States Code to criminally prohibit the trafficking, or attempt to traffic, in ''labels, patches, stickers'' and generally any item to which a counterfeit mark has been applied. In so doing, H.R. 32 provides U.S. Department of Justice prosecutors with the means not only to prosecute individuals trafficking in counterfeit goods or services, but also individuals trafficking in labels, patches, and the like that are later applied to goods.

Congress must act expeditiously to protect U.S. held trademarks to the fullest extent of the law. The recent 10-count indictment of four Massachusetts residents of conspiracy to traffic in approximately $1.4 million of counterfeit luxury goods in the case of U.S. v. Luong et al., 2005 D. Mass. underscores the need for this legislation. According to the indictment, law enforcement officers raided self-storage units earlier this year and found the units to hold approximately 12,231 counterfeit handbags; 7,651 counterfeit wallets; more than 17,000 generic handbags and wallets; and enough counterfeit labels and medallions to turn more than

50,000 generic handbags and wallets into counterfeits. Although the U.S. Attorneys Office was able to pursue charges of trafficking and attempting to traffic in counterfeit handbags and wallets, they were not able to bring charges for trafficking and attempting to traffic in the more than 50,000 counterfeit labels and medallions. As such, these defendants will escape prosecution that would have otherwise been illegal if they had only been attached to an otherwise generic bag. This simply does not make sense. Had the Stop Counterfeiting in Manufactured Goods Act of 2005 been in effect at the time of indictment, U.S. prosecutors would have been able to bring charges against the defendants for trafficking and attempting to traffic in not only counterfeit goods, but also counterfeit labels.

As Assistant Attorney General Alice Fisher said:

Those who manufacture and sell counterfeit goods steal business from honest merchants, confuse or defraud honest consumers, and illegally profit on the backs of honest American workers and entrepreneurs.

This point is underscored by the Bureau of Customs and Border Protection estimate that trafficking in counterfeit goods costs the United States approximately $200 to $250 million annually. With each passing year, the United States loses millions of dollars in tax revenues to the sale of counterfeit goods. Further, each counterfeit item that is manufactured overseas and distributed in the United States costs American workers tens of thousands of jobs. With counterfeit goods making up a growing 5 to 7 percent of world trade, this is a problem that we can no longer ignore.

To be sure, counterfeiting is not limited to the popular designer goods that we have all seen sold on corners of just about every major metropolitan city in the United States. Counterfeiting has a devastating impact on a broad range of industries. In fact, for almost every legitimate product manufactured and sold within the United States, there is a parallel counterfeit product being sold for no more than half the price. These counterfeit products range from children's toys to clothing to Christmas tree lights. More frightening are the thousands of counterfeit automobile parts, batteries, and electrical equipment that are being manufactured and placed into the stream of commerce with each passing day. I am told that the level of sophistication in counterfeiting has reached the point that you can no longer distinguish between the real and the counterfeit good or label with the naked eye. However, just because these products look the same does not mean that they have the same quality characteristics. The counterfeit products are not subject to the same quality controls of legitimate products, resulting in items that are lower in quality and likely to fall apart. In fact, counterfeit products could potentially kill unsuspecting American consumers.

In addition to closing the ''counterfeit label loophole,'' the Stop Counterfeiting in Manufactured Goods Act strengthens the criminal code and provides heightened penalties for those trafficking in counterfeit marks. Current law does not provide for the seizure and forfeiture of counterfeit trademarks, whether they are attached to goods or not. Therefore, many times such counterfeit goods are seized one day, only to be returned and sold to an unsuspecting public. To ensure that individuals engaging in the practice of trafficking in counterfeit marks cannot reopen their doors, H.R. 32 establishes procedures for the mandatory seizure, forfeiture, and destruction of counterfeit marks prior to a conviction. Further, it provides for procedures for the mandatory forfeiture and destruction of property derived from or used to engage in the trafficking of counterfeit marks.

When this legislation was sent over to the Senate from the House, concerns were raised to Senator LEAHY and myself about the language in Section 2(bbb)(1)(B) of this bill pertaining to the forfeiture authority of the U.S. Department of Justice. In focusing our attention to this section, we discussed the scope of the facilitation language, which parallels the drug and money laundering forfeiture language in 21 U.S.C. 853 and 18 U.S.C. 982, respectively, and how it might relate to Internet marketplace companies, search engines, and ISPs. Specifically, we were aware of concerns regarding the potential misapplication of the facilitation language in Section 2(b)(1)(B) to pursue forfeiture and seizure proceedings against responsible Internet marketplace companies that serve as third-party intermediaries to online transactions.

Mr. LEAHY. Mr. President, Section 2(b)(1)(B) authorizes U.S. Attorneys to pursue civil in rem forfeiture proceedings against ''any property used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a).'' The intent of this language is to provide attorneys and prosecutors with the authority to bring a civil forfeiture action against the property of bad actors who are facilitating trafficking or attempts to traffic in counterfeit marks. The forfeiture authority in Section 2(b)(1)(B) cannot be used to pursue forfeiture and seizure proceedings against the computer equipment, website or network of responsible Internet marketplace companies, who serve solely as a third party to transactions and do not tailor their services or their facilities to the furtherance of trafficking or attempts to traffic in counterfeit marks. However, these Internet marketplace companies must make demonstrable good-faith efforts to combat the use of their systems and services to traffic in counterfeit marks. Companies must establish and implement procedures to take down postings that contain or offer to sell goods, services, labels, and the like in violation of this act upon being made aware of the illegal nature of these items or services.

It is the irresponsible culprits that must be held accountable. Those who profit from another's innovation have proved their creativity only at escaping responsibility for their actions. As legislators it is important that we provide law enforcement with the tools needed to capture these thieves.

I say to Senator SPECTER, it is also my understanding that the U.S. Sentencing Commission recently promulgated new Federal sentencing guidelines to account for the changes in how intellectual property crimes are committed. Could the Senator clarify for the record why we have authorized the U.S. Sentencing Commission to further amend the Federal sentencing guidelines and policy statements for crimes committed in violation of title 18, section 2318 or 2320, of the United States Code?

Mr. SPECTER. I say to Senator LEAHY, as the Senator is aware, periodically Congress directs the Sentencing Commission to update the Federal sentencing guidelines upon the periodic directive of Congress to reflect and account for changes in the manner in which intellectual property offenses are committed. The recent amendments to which you refer were promulgated by the Sentencing Commission pursuant to the authorization in the Family Entertainment and Copyright Act of 2005, also known as FECA. These amendments to the Federal sentencing guidelines, which took effect on October 24, 2005, address changes in penalties and definitions for intellectual property rights crimes, particularly those involving copyrighted pre-release works and issues surrounding ''uploading.'' For example, these guidelines provide for a 25 percent increase in sentences for offenses involving pre-release works. In addition, the Commission revised its definition of ''uploading'' to ensure that the guidelines are keeping up with technological advances in this area.

I would like to make it clear for the record that the directive to the Sentencing Commission in section 3 of H.R. 32 is not meant as disapproval of the Commission's recent actions in response to FECA. Rather, section 3 covers other intellectual property rights crimes that Congress believes it is time for the Commission to revisit. Specifically, section 3 directs the Commission to review the guidelines, and particularly the definition of ''infringement amount,'' to ensure that offenses involving low-cost items like labels, patches, medallions, or packaging that are used to make counterfeit goods that are much more expensive, are properly punished. It also directs the Commission to ensure that the penalty provisions for offenses involving all counterfeit goods or services, or devices used to facilitate counterfeiting, are properly addressed by the guidelines. As it did in response to the No

Electronic Theft Act of 1997 and FECA, I am confident that the Commission will ensure that the Federal sentencing guidelines provide adequate punishment and deterrence for these very serious offenses and I look forward to the Commission's response to this directive.

Mr. LEAHY. I say to Senator SPECTER, thank you for that clarification. As you are aware, there has been overwhelming support for this legislation. It has been very heartening to see such overwhelming support for this important bill. Counterfeiting is a threat to America. It wreaks real harm on our economy, our workers, and our consumers. This bill is a tough bill that will give law enforcement improved tools to fight this form of theft. The bill is short and straightforward, but its impact should be profound and far reaching.

Mr. SPECTER. At this point, I would like to take this opportunity to thank Representative JIM SENSENBRENNER, chairman of the House Judiciary Committee, and Representative JOE KNOLLENBERG for their leadership in the House with regard to H.R. 32. In January of 2005, Representative KNOLLENBERG introduced H.R. 32 in the House. When the bill was in committee, he fostered negotiations between the Department of Justice, the U.S. Chamber of Commerce, and the International Trademark Association to ensure that it passed the House. I would also like to thank my colleague Senator LEAHY, ranking member of the Senate Judiciary Committee, and Senators ALEXANDER, BAYH, BROWNBACK, COBURN, CORNYN, DEWINE, DURBIN, FEINGOLD, FEINSTEIN, HATCH, KYL, LEVIN, REED, STABENOW, and VOINOVICH for their cosponsorship of S. 1699, the companion legislation to H.R. 32. It is through the hard work of all of these Members that we were able to achieve truly bipartisan support for language that will ensure the protection of American-held trademarks.

Mr. LEAHY. Some of our most important legislation is produced not only when we reach across the aisle in the name of bipartisanship, but when we work across Chambers and reach true consensus. I would also like to thank Senators ALEXANDER, BAYH, BROWNBACK, COBURN, CORNYN, DEWINE, DURBIN, FEINGOLD, FEINSTEIN, HATCH, KYL, LEVIN, REED, STABENOW, and VOINOVICH for their cosponsorship of the Senate companion legislation. Counterfeiting is a serious problem that does not lend itself to a quick and easy solution. This legislation is an important step towards fighting counterfeiting. I hope we can build on the success of this law.

Mr. LEAHY. Mr. President, I am pleased to join with Senator CORNYN in another of our bipartisan efforts to improve the lives of Americans through effective and efficient Government. The Protecting American Goods and Services Act of 2005, which was passed unanimously out of the Senate last November as S. 1095, is now part of a package that includes the Stop Counterfeiting in Manufactured Goods Act, which I co-sponsored with Senator SPECTER as S. 1699. The Protecting American Goods and Services Act strengthens our ability to combat the escalating problem of counterfeiting worldwide. In order to effectively fight intellectual property theft, we need stiff penalties for counterfeiters and those who are caught with counterfeit goods with the intent to traffic their false wares. Ours is a short bill—indeed, it is only two pages long—but it will have global implications in the fight against piracy.

Counterfeiting is a growing problem that costs our economy hundreds of billions of dollars every year and has been linked to organized crime, including terrorist organizations. According to the International Anti-Counterfeiting Coalition, counterfeit parts have been discovered in helicopters sold to NATO, in jet engines, bridge joints, brake pads, and fasteners in equipment designed to prevent nuclear reactor meltdowns. The World Health Organization estimates that the market for counterfeit drugs is about $32 billion each year.

Several years ago, Senator HATCH joined me in sponsoring the Anti-Counterfeiting Consumer Protection Act of 1996, which addressed counterfeiting by amending several sections of our criminal and tariff codes. That law made important changes, particularly by expanding RICO, the Federal antiracketeering law, to cover crimes involving counterfeiting and copyright and trademark infringement: Then, as now, trafficking in counterfeit goods hurts purchasers, State and Federal Governments, and economies at every level.

Perhaps most disturbingly, the U.S. Customs Service reports that terrorists have used transnational counterfeiting operations to fund their activities: The sale of counterfeit and pirated music, movies, software, T-shirts, clothing, and fake drugs ''accounts for much of the money the international terrorist network depends on to feed its operations.''

Last year, as in years past, I worked with Senator ALLEN on an amendment to the Foreign Operations bill that provides the State Department with vital resources to combat piracy of U.S. goods abroad. The bill we ultimately passed included $3 million for this important purpose. Yet more work both at home and abroad remains. When you consider that the economic impact of tangible piracy in counterfeit goods is estimated to be roughly $350 billion a year and to constitute between 5 percent and 7 percent of worldwide trade, a few million dollars is a worthwhile investment.

We have certainly seen how this form of theft touches the lives of hard-working Vermonters. Burton Snowboards is a small company, whose innovation has made it an industry leader in snowboarding equipment and apparel. Unfortunately, knock-off products carrying Burton's name have been found across the globe. Vanessa Price, a representative of Burton, testified about counterfeiting at the Judiciary Committee's March 23, 2004, hearing on this topic. In addition to learning about the economic costs of counterfeiting, I asked her after the hearing about the risks posed to consumers by these goods. Her answer was chilling:

> In the weeks since my Senate testimony, I discovered a shipment of counterfeit Burton boots for sale through a discount sports outfit . . . After examining the poor quality of the counterfeit boots, we determined that anyone using the boots for snowboarding risks injury due to a lack of reinforcement and support in the product's construction.

Customers and businesses lose out to counterfeiters in other ways, too. SB Electronics in Barre, VT, has seen its capacitors reverse engineered and its customers lost to inferior copycat models. Vermont Tubbs, a furniture manufacturer in Rutland, has seen its designs copied, produced offshore with inferior craftsmanship and materials, and then reimported, so that the company is competing against cheaper versions of its own products. And Hubbardton Forge in Castleton, VT, has seen its beautiful and original lamps counterfeited and then sold within the United States at prices—and quality—far below their own. This is wrong. It is unfair to consumers who deserve the high quality goods they think they are paying for, and it is unfair to innovators who play by the rules and deserve to profit from their labor.

This bill helps to combat this growing scourge.

S. 1095 criminalizes the possession of counterfeit goods with the intent to sell or traffic in those goods, and it expands the definition of ''traffic'' to include any distribution of counterfeits with the expectation of gaining something of value—criminals should not be able to skirt the law simply because they barter illegal goods and services in exchange for their illicit wares. Finally, the bill will criminalize the importation and exportation of counterfeit goods, as well as of bootleg copies of copyrighted works into and out of the United States.

By tying off these loopholes and improving U.S. laws on counterfeiting, we are sending a powerful message to the criminals who belong in jail, and to our innovators.

Mr. FRIST. Mr. President, I ask unanimous consent that the Specter substitute at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid on the table, and that any statements thereon be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2889) was agreed to, as follows:

(Purpose: To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks, clarify the prohibition on the trafficking in goods or services, and for other purposes)

Strike all after the enacting clause and insert the following:

SECTION 1. TRAFFICKING IN COUNTERFEIT MARKS.

(a) SHORT TITLE; FINDINGS.—

(1) SHORT TITLE.—This section may be cited as the ''Stop Counterfeiting in Manufactured Goods Act''.

(2) FINDINGS.—The Congress finds that—

(A) the United States economy is losing millions of dollars in tax revenue and tens of thousands of jobs because of the manufacture, distribution, and sale of counterfeit goods;

(B) the Bureau of Customs and Border Protection estimates that counterfeiting costs the United States $200 billion annually;

(C) counterfeit automobile parts, including brake pads, cost the auto industry alone billions of dollars in lost sales each year;

(D) counterfeit products have invaded numerous industries, including those producing auto parts, electrical appliances, medicines, tools, toys, office equipment, clothing, and many other products;

(E) ties have been established between counterfeiting and terrorist organizations that use the sale of counterfeit goods to raise and launder money;

(F) ongoing counterfeiting of manufactured goods poses a widespread threat to public health and safety; and

(G) strong domestic criminal remedies against counterfeiting will permit the United States to seek stronger anticounterfeiting provisions in bilateral and international agreements with trading partners.

(b) TRAFFICKING IN COUNTERFEIT MARKS.—Section 2320 of title 18, United States Code, is amended as follows:

(1) Subsection (a) is amended by inserting after ''such goods or services'' the following: '', or intentionally traffics or attempts to traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive,''.

(2) Subsection (b) is amended to read as follows:

''(b)(1) The following property shall be subject to forfeiture to the United States and no property right shall exist in such property:

''(A) Any article bearing or consisting of a counterfeit mark used in committing a violation of subsection (a).

''(B) Any property used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a).

''(2) The provisions of chapter 46 of this title relating to civil forfeitures, including section 983 of this title, shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States, shall order that any forfeited article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law.

''(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States—

''(i) any property constituting or derived from any proceeds the person obtained, directly or indirectly, as the result of the offense;

''(ii) any of the person's property used, or intended to be used, in any manner or part, to commit, facilitate, aid, or abet the commission of the offense; and

''(iii) any article that bears or consists of a counterfeit mark used in committing the offense.

''(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. Notwithstanding section 413(h) of that Act, at the conclusion of the forfeiture proceedings, the court shall order that any forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed.

''(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the mark and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).

''(5) The term 'victim', as used in paragraph (4), has the meaning given that term in section 3663A(a)(2).''.

(3) Subsection (e)(1) is amended—

(A) by striking subparagraph (A) and inserting the following:

''(A) a spurious mark—

''(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature;

''(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

''(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services for which the mark is registered in the United States Patent and Trademark Office; and

''(iv) the use of which is likely to cause confusion, to cause mistake, or to deceive; or''; and

(B) by amending the matter following subparagraph (B) to read as follows:

''but such term does not include any mark or designation used in connection with goods or services, or a mark or designation applied to labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature used in connection with such goods or services, of which the manufacturer or producer was, at the time of the manufacture or production in question, authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation.''.

(4) Section 2320 is further amended—

(A) by redesignating subsection (f) as subsection (g); and

(B) by inserting after subsection (e) the following:

''(f) Nothing in this section shall entitle the United States to bring a criminal cause of action under this section for the repackaging of genuine goods or services not intended to deceive or confuse.''.

(c) SENTENCING GUIDELINES.—

(1) REVIEW AND AMENDMENT.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this subsection, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section 2318 or 2320 of title 18, United States Code.

(2) AUTHORIZATION.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

(3) RESPONSIBILITIES OF UNITED STATES SENTENCING COMMISSION.—In carrying out this subsection, the United States Sentencing Commission shall determine whether the definition of ''infringement amount'' set forth in application note 2 of section 2B5.3 of the Federal sentencing guidelines is adequate to address situations in which the defendant has been convicted of one of the offenses listed in paragraph (1) and the item in which the defendant trafficked was not an infringing item but rather was intended to facilitate infringement, such as an anti-circumvention device, or the item in which the defendant trafficked was infringing and also was intended to facilitate infringement in another good or service, such as a counterfeit label, documentation, or packaging, taking into account cases such as U.S. v. Sung, 87 F.3d 194 (7th Cir. 1996).

SEC. 2. TRAFFICKING DEFINED.

(a) SHORT TITLE.—This section may be cited as the ''Protecting American Goods and Services Act of 2005''.

(b) COUNTERFEIT GOODS OR SERVICES.—Section 2320(e) of title 18, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) the term 'traffic' means to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of;'';

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following:

''(3) the term 'financial gain' includes the receipt, or expected receipt, of anything of value; and''.

(c) CONFORMING AMENDMENTS.—

(1) SOUND RECORDINGS AND MUSIC VIDEOS OF LIVE MUSICAL PERFORMANCES.—Section 2319A(e) of title 18, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) the term 'traffic' has the same meaning as in section 2320(e) of this title.''.

(2) COUNTERFEIT LABELS FOR PHONORECORDS, COMPUTER PROGRAMS, ETC.—Section 2318(b) of title 18, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) the term 'traffic' has the same meaning as in section 2320(e) of this title;''.

(3) ANTI-BOOTLEGGING.—Section 1101 of title 17, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) DEFINITION.—In this section, the term 'traffic' has the same meaning as in section 2320(e) of title 18.''.

The bill (H.R. 32), as amended, was read the third time and passed.

KATRINA EMERGENCY ASSISTANCE ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 229, S. 1777.

The PRESIDING OFFICER. The clerk will report the bill by title.

A bill (S. 1777) to provide relief for the victims of Hurricane Katrina.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEIBERMAN. Mr. President, I have been pleased to work with Senator COLLINS to draft and reach agreement on this legislation to provide relief for the victims of Hurricane Katrina.

The package that the Senate is passing today does not contain everything that I would like, but I think the provisions of this bill will make a real difference for the families and their communities.

The challenges facing our country in the aftermath of Hurricane Katrina are like nothing we have faced in modern times—if ever.

This legislation has four parts.

First, this measure will provides an additional 13 weeks of Federal Disaster Unemployment Assistance for those who lost their jobs because of Hurricane Katrina, thereby extending the duration of benefits from the current 26 weeks to 39 weeks. More than 46,000 gulf coast workers were left jobless as a result of Hurricane Katrina, and this legislation is urgently needed, as these workers will run out of their 26 weeks of Federal assistance starting March 4.

Those who qualify for Disaster Unemployment Assistance, or DUA, generally do not qualify for regular unemployment benefits. They mostly include the self-employed, like fisherman and small business owners, who make up a vital sector of the economy in the gulf coast. Their weekly DUA assistance, which corresponds to the amounts provided in regular unemployment benefits in the States, is modest, at best. In Louisiana, for example, the weekly DUA benefit averages just $100 a week.

The version of this legislation that I proposed on the Senate floor on September 15, 2005, would have also increased the minimum DUA benefit to $135 a week, or half the national average unemployment benefit, and that was retained in our bill reported out of the Homeland Security and Governmental Affairs committee; the compromise amendment now before the Senate leaves the benefit levels under current statute unchanged.

The fact that so many families remain unemployed almost 6 months after the storm is a grave reminder that we as a Nation still have far to go to realize our promise of hope to the proud people of New Orleans and rest of the gulf coast who suffered the worst natural disaster this Nation has ever known. Extending these limited benefits by 13 weeks, just as we did for the families left jobless after the events of September 11, is the least we can do to allow these displaced families some measure of security as they look for work while facing mounting expenses and countless other challenges in rebuilding their lives and their communities.

In the current amendment, we added language in section 2(a)(2) clarifying what we understand to be the current law regulating the DUA program—that an individual is not eligible to collect DUA at any given time if the individual is, at the same time, eligible to receive any other unemployment benefits available under Federal or State law. Individuals whose regular unemployment benefits expire may then be eligible to receive DUA if no other Federal or State jobless benefits are available. However, under no circumstances can they collect more than the 39 weeks in total benefits. This provision is consistent with current DUA law as applied by the U.S. Department of Labor. We are simply extending the benefit period from 26 weeks under current law to 39 weeks.

Two, the second provision in the bill would allow communities to be reimbursed for buying certain supplies in bulk—such as linens, cots, or toiletries—and giving them out to individual victims of either Hurricane Katrina or Hurricane Rita.

Third, the bill expresses the sense of Congress that international students should not be deported solely due to their inability to fulfill the terms of their visas as a result of a national disaster such as Katrina.

Fourth and finally, the legislation requires that the Secretary of Homeland Security must establish new inspection guidelines saying that inspectors who determine eligibility for FEMA assistance may not enter into contracts with those for whom they perform inspections.

This bill does not make all of the changes to disaster assistance programs that I would have liked. But that is the nature of compromise. In my opinion, the Disaster Unemployment Assistance program, in particular, needs further strengthening. I hope there may be an opportunity in the future to consider further improvements. But I am very pleased that we have been able to make very meaningful improvements that will help families weather this terrible storm.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendment at the desk be agreed to, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2890) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Katrina Emergency Assistance Act of 2005''.

SEC. 2. UNEMPLOYMENT ASSISTANCE.

(a) IN GENERAL.—Notwithstanding section 410 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5177), in providing assistance under that section to individuals unemployed as a result of Hurricane Katrina—

(1) the President shall accept applications for assistance during—

(A) the 90-day period beginning on the date on which the applicable major disaster was declared; or

(B) such longer period as may be established by the President; and

(2) subject to subsection (b), the President shall provide assistance to any unemployed individual, to the extent the individual is not entitled to unemployment compensation under any Federal or State law, until that individual is reemployed in a suitable position.

(b) LIMITATION FOR PERIOD OF ASSISTANCE.—The total amount of assistance payable to an individual under subsection (a) may not exceed payments based on a 39-week period of unemployment.

SEC. 3. REIMBURSEMENT FOR PURCHASES.

(a) DEFINITIONS.—In this section:

(1) DISASTER PERIOD.—The term ''disaster period'' means, with respect to any State that includes an area for which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) as a result of Hurricane Katrina or Hurricane Rita, the period beginning on the earliest date on which any area of the State was so declared and ending on the latest date for which any such declaration of an area of the State terminates.

(2) KATRINA OR RITA SURVIVOR.—The term ''Katrina or Rita Survivor'' means an individual who—

(A) resides in an area for which a major disaster has been declared in accordance with 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) as a result of Hurricane Katrina or Hurricane Rita; or

(B) resided in an area described in subparagraph (A) during the 7 days immediately preceding the date of declaration of a major disaster described in subparagraph (A).

(3) MAJOR DISASTER.—The term ''major disaster'' has the meaning given the term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(b) REIMBURSEMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President may reimburse a community for each purchase of supplies (such as food, personal hygiene products, linens, and clothing) distributed to Katrina or Rita Survivors.

(2) ELIGIBLE PURCHASES.—Reimbursement under paragraph (1) shall be available only with respect to supplies that—

(A) are purchased with taxpayer dollars; and

(B) would otherwise be eligible for reimbursement if purchased by a Katrina or Rita Survivor.

(c) PERIOD OF APPLICABILITY.—This section and the authority provided by this section apply only to a community assisting Katrina or Rita Survivors from a State during the disaster period of the State.

SEC. 4. INTERNATIONAL STUDENTS DISPLACED BY KATRINA.

It is the sense of Congress that the Bureau of Immigration and Customs Enforcement within the Department of Homeland Security should suspend or refrain from initiating removal proceedings for international students and scholars who are deportable solely due to their inability to fulfill the

terms of their visas as a result of a national disaster, such as Hurricane Katrina.

SEC. 5. CONTRACTING AUTHORITY.

Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, acting through the Under Secretary for Emergency Preparedness, shall propose new inspection guidelines that prohibit an inspector from entering into a contract with any individual or entity for whom the inspector performs an inspection for purposes of determining eligibility for assistance from the Federal Emergency Management Agency.

The bill (S. 1777), as amended, was read the third time and passed.

ORDERS FOR THURSDAY, FEBRUARY 16, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, February 16. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business for up to 30 minutes, with the first 15 minutes under the control of the Democratic leader or his designee, and the second 15 minutes under the control of the majority leader or his designee; provided further, that following morning business, the Senate resume consideration of the motion to proceed to S. 2271, as under the previous order. I further ask that the time until the cloture vote at 10:30 a.m. be equally divided between the two leaders or their designees.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, if the majority leader will withhold completing business for a moment, I wish to have a few minutes to respond.

Mr. FRIST. Let me finish my comments before we close.

Mr. DURBIN. Of course.

PROGRAM

Mr. FRIST. Mr. President, tomorrow—to explain what we did—following morning business, the Senate will resume debate on the motion to proceed to the PATRIOT Act amendments act. The cloture vote on that motion to proceed will occur at 10:30 in the morning. Under the agreement, once cloture has been invoked on the motion to proceed, we will proceed immediately to the bill, and a cloture vote on the bill itself will occur at 2:30 p.m. on Tuesday, February 28, with a vote on final passage at 10 a.m. on Wednesday, March 1.

Mr. DURBIN. I thank the leader.

Mr. President, I will respond to some comments he made a few minutes ago. First, about the asbestos bill, I think the record speaks for itself. A 393-page bill came to the floor of the Senate. It was a fairly complicated bill, which would have affected hundreds of thousands, maybe millions, of Americans over the next 50 years, and created a $140 billion trust fund. It involved payments of billions of dollars into that trust fund by American businesses from a list that was never publicly disclosed. Then as the bill arrived on the floor, as we expected, the chairman of the Senate Judiciary Committee filed a substitute to the bill, wiping away the 393-page bill, replacing it with a 392-page bill, and then we proceeded to debate.

One amendment was called by the Senator from Texas, Mr. CORNYN. Objection was made on the floor to Senator CORNYN's amendment, and a motion to table and stop debate on his amendment was passed. At that point, we went into a question about whether that bill would satisfy the requirements of the Budget Act. Then, without another amendment being offered, the majority leader announced the Republican side was going to file a cloture motion to close down debate and amendments on this bill.

To suggest that somehow we are inundating this body with amendments and debate is to overlook the obvious: One amendment was offered by a Republican Senator from Texas, and as we were waiting for the budget point of order, the majority leader suggested that we would close down debate on the bill, and that was the end of the story.

So this argument that somehow we are dragging our feet here and somehow miring down the process with amendments—the record speaks for itself. That was not the case on the asbestos bill. Last night, when the budget point of order was called, it was sustained. That means, in common terms, that the bill was returned to committee because it was not written properly.

It was not written in a way to comply with our Budget Act. So that is the state of affairs on the asbestos bill.

Now comes the PATRIOT Act. If there is any suggestion in the majority leader's remarks that anything that has happened on the floor of the Senate yesterday or today in any way endangers America, I think the record speaks for itself. That is not a fact. The current PATRIOT Act, as written, continues to protect America until March 10. We could continue debating right here on the floor of the Senate up until March 9 and even on March 10, and we would never have a gap in coverage of the PATRIOT Act as a law. So there is no endangerment of America, no lessening of our defense against terrorism by the possibility that the Senate might stop, reflect, consider, and even debate the PATRIOT Act.

I am sorry that my colleague, Senator FEINGOLD of Wisconsin, is not here to speak for himself, but he has been an extraordinary leader on this issue. He has taken a position which I think is nothing short of politically bold, if not courageous, in standing up and saying, even in the midst of terrorism, we need to take the time and debate the core values and issues involved in the PATRIOT Act.

What has Senator FEINGOLD asked for? He has asked for an opportunity to offer perhaps four amendments, four amendments, and he has gone on to say that he doesn't want days or long periods of time to debate them. He will agree to limited debate on each amendment. Nothing could be more reasonable. What he said is the Senate needs to face reality. This is an important bill. It involves our constitutional rights. And whether I would agree or disagree with any of Senator FEINGOLD's amendments, I would fight, as long as I had the breath in my body and the strength to stand, that he have the right to express his point of view and bring this matter to a vote in the Senate. That is not unreasonable, nor is Senator FEINGOLD unreasonable in his position. And for the suggestion to be made on the floor that somehow we have dragged this out for a lengthy period of time overlooks the obvious.

The offer was made for two votes tomorrow on Senator FEINGOLD's amendment and then a cloture vote tomorrow on the bill and, if cloture were invoked, pass the bill tomorrow. That offer was rejected by the Republican majority. Why? Not because of fear of terrorism but fear of debate. Not because of fear of threats to America but fear of threats that some amendment may be adopted, somehow upsetting an apple cart. Well, that is unfortunate. But this Democratic process is an open process—at least I hope it is—and we should protect the rights of Members on both sides of the aisle to offer amendments with reasonable periods of debate. We should have actual debate on the floor and then make a decision.

One of my favorite friends and colleagues from the House was a fellow named Congressman Mike Synar of Oklahoma. He passed away about 10 years ago. I liked Mike so much. He was a close personal friend. He used to lament that so many of his colleagues in the House of Representatives were loathe to even engage in a debate on a controversial issue. He would listen to Members of the House of Representatives whining and crying about having to face a vote on a controversial issue, and Mike Synar used to say: If you don't want to fight a fire, don't be a fireman. If you don't want to vote on tough issues, don't be a Member of the U.S. House of Representatives.

Well, the Mike Synar rule applies here. If you don't want to face the reality of the debate on critical constitutional and legal issues, I don't know why one would run for the Senate.

What Senator RUSS FEINGOLD of Wisconsin has asked us to do is to consider amendments to the PATRIOT Act. What is wrong with that? That is as basic as it gets. That is why we are here. And whether I would vote for or against those amendments, I would defend his right to offer them, and I hope that the record will reflect what I have just said. He was ready to stand, offer

the amendments with limited debate, and then move this bill to a cloture vote tomorrow, which, if it were invoked, would see the passage of the bill as soon as tomorrow. That offer by Senator FEINGOLD was rejected.

So to say that we are foot-dragging on this side of the aisle or that any Democratic Senator such as Senator FEINGOLD is not trying to cooperate does not accurately state what we have been through to this moment on the PATRIOT Act.

I will close by saying that despite partisan differences, there is partisan cooperation in this Chamber, and I wish to say as I close these remarks that I want to salute Senator JOHN SUNUNU on the Republican side of the aisle; he has worked night and day over the last several months to come up with what I consider to be a reasonable way to end the current debate on the PATRIOT Act.

We stood together, we worked together, we brought the issue to the floor. I don't think it is unreasonable to give Senator FEINGOLD his moment to offer amendments with limited debate, bring them to a vote, put the Senate on the record, and move forward. To suggest otherwise does not reflect an accurate presentation of the facts as they occurred.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I find my colleague's comments in response to my statement that the problem is that we are seeing this whole pattern of obstruction and postponement—it is not just one bill, it is this whole series of bills—I find his comments responsive to several of the things I said but not really responsive to this pattern. I really just want to make that a comment and not get into a long debate about it. But I do want to point out that pattern of the things that I mentioned, like the PATRIOT Act as my colleague pointed out, it is time to bring this to a close.

This thing is going to pass overwhelmingly, and that is exactly right. I rejected options to continue to amend this forever. The problem, in part, that got us to this point is every time we come to an agreement which is a bill that, as written, will have overwhelming support in this body, somebody will come forward and say: One more amendment, one more amendment, one more amendment.

It is exactly right. It is time to bring this to a close. This will pass with overwhelming support—not today, as it should have, or tomorrow or Monday or Tuesday, but on Wednesday morning. It is going to pass with overwhelming support.

My point is this whole delay, this postponement, is stopping the Nation's business as we have to address other important issues—whether it is our budgetary issues, whether issues on health care or education or LIHEAP, flood insurance or lobbying reform. All these issues get put off another 4 or 5 days—yes, using the rights we have on this floor. I respect that. But to no avail. It is hurting the American people, not helping the American people.

Asbestos—this is a complicated bill. It is a bill many of us have been working on for 3 years. We started the bill, not Tuesday or Monday of this week and not Friday of last week or Thursday or Tuesday, but I think it was Monday morning that we said: Let's talk about this bill, let's debate this bill and have unlimited debate. As I pointed out, they said: No, we are not going to go to the bill. We are not going to go to a bill which is an important bill which has to be addressed.

We have 700,000 individuals who have filed claims for their illnesses, and 300,000 of those claims are still pending in the courts. Tragically, as I mentioned earlier, some of the most ill among those are among the worst served because of the delay in having the cases considered, and then, once considered, even if they get compensation for every dollar that is spent, 60 cents goes to the system and the trial lawyers and only 40 cents goes to the patient.

Yet, because of this mentality of Democrats, obstructing—they say you are not going to go to the bill. You are going to have to file a motion to proceed and cloture on that motion to proceed to the bill, which is a waste of 2 days. Then the vote was either 98 to 2 or 98 to 1. So once we got to the vote, they said: We will be with you, let's go ahead and consider it. And then to hear my colleagues say: We didn't have an opportunity to debate, when it was a request from your side of the aisle that we take a whole day, that we not have amendments but just to talk about it again—I am not sure why—but then to complain that we did not have time to offer amendments when it came to that first day—I think it was Wednesday; no amendments today—it is a little bit disingenuous, especially as it fits this larger pattern I laid out of the tax relief bill just to get to conference requiring three separate considerations on this floor, 17 rollcall votes for the first 20-hour limitation, the second 20-hour limitation requiring seven more rollcall votes, motions to instruct here all yesterday morning, nonbinding motions.

The pensions bill, I still do not fully understand why there is delay in getting the pensions bill to conference, when the first request was made in December and the second one earlier this year, and then now, on an important bill, when people are out there saying we have to address the pension bill—it passed the Senate, passed the House of Representatives—we have to get it to conference so we can come up with a final product for the President to sign.

Instead of arguing each of these individual bills, I just wanted to make the point that it is a pattern that we cannot continue. We have to work together in the Nation's interest, in the interests of the American people. Unless things are changed, we are not going to be delivering what we are responsible to do.

Anyway, that is a little bit out of my frustration with the other side of the aisle in terms of the way they have conducted business, and I believe we can work together in a civil way to address these important issues in the coming days.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:50 p.m., adjourned until Thursday, February 16, 2006, at 9:30 a.m.